



9 May 2011

Your Ref: TBA  
Our Ref: NJ.TK.JO.10180  
Legal Practitioner Director: Mr Narinder Jessy  
Associate: Mr Jason O'Meara  
Email: jomeara@cslegal.com.au

Shire of York  
PO Box 22  
YORK WA 6302

Attention: Ray Hooper / Pat Mogridge

By Email: [ceo@york.wa.gov.au](mailto:ceo@york.wa.gov.au)  
& [pat.mogridge@york.wa.gov.au](mailto:pat.mogridge@york.wa.gov.au)

Dear Ray and Pat,

Shire of York v Rosmill Pty Ltd (Northam Magistrates Court No. 113/2010)  
Shire of York v Rosmill Pty Ltd (Northam Magistrates Court No. 112/2010)  
Shire of York v Rosmill Pty Ltd (Northam Magistrates Court No. 118/2010)  
Shire of York v Rosmill Pty Ltd (Northam Magistrates Court No. 120/2010)

We refer to the above matters.

Please find **attached** a Notice of Appeal filed by the Defendants in the District Court dated 5 May 2011.

Should you wish to be heard in relation to this appeal, you must file a Notice of Intention to Appear, failing which that the Defendants Appeal may proceed without your input.

To this extent, please find **attached** for your review and execution a revised cost and retainer agreement in anticipation of our fees and disbursements in relation to the appeal.

We trust the above is to your understanding and look forward to hearing from you as a matter of priority.

Yours faithfully,



CS LEGAL

Encl:

cc. Attention: Lauren Sudholz  
Austral Mercantile Collections  
BY EMAIL: [lauren.sudholz@australmercantile.com.au](mailto:lauren.sudholz@australmercantile.com.au)

Unit 1, 234 Pier Street, Perth WA 6000  
PO Box 8259, Perth BC WA 6849

T: (08) 9476 4499  
F: (08) 9325 4174  
W: [www.cslegal.com.au](http://www.cslegal.com.au)



**SOLICITOR CLIENT  
STANDARD COSTS AGREEMENT**

To: Austral Mercantile Collections Pty Ltd (ACN 083 776 149)  
Level 12, 256 Adelaide Terrace  
Perth WA 6000 ("Austral")  
As duly authorised agents for The Client  
Specified in Item 1 of the Schedule (hereafter "You")

From: CS Legal (ABN 92 137 596 126)  
Unit 1, 234 Pier Street  
Perth WA 6000

Date: As specified in Item 2 of the Schedule.

This is an offer by CS Legal to **Shire of York** to enter into a cost agreement pursuant to the Legal Profession Act 2008.

If you accept this offer, CS Legal will provide services to you as outlined in the schedule of this offer on the terms and conditions set out in this offer.

This offer may be accepted by:

1. your signature on this offer where indicated;
2. if you are a company, the signature of at least one director of the company; and
3. a notice or letter in writing from you stating clearly that you accept the offer and signed by you or a director (if a company); and
4. instructions received from you to carry out work in relation to the matter for which this offer relates.

**1. THE WORK**

The work You require us to do is as specified in Item 3 of the Schedule.

**2. COSTS, CHARGES AND EXPENSES**

The basis upon which our fees are calculated is as follows:

- A. **Hourly Rates:** The following amounts per hour with each hour divided into ten six minute units with a minimum charge of one unit for any task according to the following table:

	Solicitor Over 5 Yrs	Solicitor Under 5 Yrs	Articled Clerk	Clerk
Magistrates Court	\$300.00	\$209.00	\$110.00	\$110.00
District Court	\$396.00	\$275.00	\$198.00	\$198.00
Supreme Court	\$396.00	\$275.00	\$198.00	\$198.00
Federal Court	\$396.00	\$275.00	\$198.00	\$198.00

OR

- B. According to our Estimate of Costs provided in Item 4 to the Schedule.

OR

- C. According to any agreement or variation entered into on Your behalf by Your Agent and in relation to this note the arrangement whereby Court attendance fees may be charged after each appearance.

TOGETHER with Disbursements.

Disbursements include: Counsels and experts and other fees charged to the firm and are passed on to You.

For photocopying the following scale applies:-  
50¢ per page.

For bulk photocopying [of amounts over 200 pages] by negotiation.

**3. PRESENT ESTIMATE OF CHARGES AND EXPENSES AND OF PROSPECTS OF SUCCESS.**

Our estimate of the cost of running Your action is as specified in Item 4 of the Schedule.

It is impossible to predict the future. We will use our best endeavours to provide revised forward estimates of future costs when and if circumstances significantly change.

Our estimate of the likely success of Your action is as specified in Item 6 of the Schedule. Success cannot be guaranteed.

**4. PERSONS RESPONSIBLE FOR WORK**

Narinder Jessy will be responsible for all aspects of the work, but will, wherever possible, use a more junior solicitor or paralegal or other assistance to reduce costs.

**5. BILLING ARRANGEMENTS**

We will send You a bill for our charges and expenses:

- (a) After attending at Court on Your behalf or at the end of each month.
- (b) If agreed by Your agent Austral at the end of each month or other period agreed, while the Work is in progress; and/or

We may ask You through Your agent Austral to pay to us an amount to enable payment of expenses, or to provide security for them and our charges. In that case, we will assume, upon receipt of Your payment, your authority to draw on the money paid for our charges and expenses, as they become due.

We will also assume Your authority is given for any judgment or settlement monies to be paid directly to Austral's trust account and that Austral may pay ourselves from this money immediately after sending You our bill of costs.

**6. CLIENT'S RIGHT TO A BILL**

The Act provides that a legal practitioner cannot take action for recovery of legal costs until thirty (30) days after a bill of costs has been given to the person charged with their payment. You agree that Austral is Your duly appointed agent and that provision of our account to Austral is provision to You.

**7. INTEREST CHARGED**

At the expiry of 30 days after an invoice is given to You, interest, at the rate specified in the Supreme Court Act 1932 may be charged on any amounts unpaid. In any event the rate of interest shall not be greater than the rate specified under the Legal Profession Act 2008.

**8. RIGHT TO HAVE BILL REVIEWED (ASSESSED)**

The Act gives you the right to have the charges made in an invoice assessed for its fairness and reasonableness by a taxing officer of the Supreme Court.

**9. RETENTION OF CLIENT'S DOCUMENTS**

We will, on completion of the Work, retain any papers (except documents deposited in safe custody) for no more than seven (7) years and on the understanding that we have Your authority to destroy the file seven years after the date of the final bill rendered by us in this matter.

**10. ACCEPTANCE OF THIS OFFER**

We will begin the Work promptly upon being advised of the delivery of this agreement to Austral who shall then notify us of Your acceptance of this offer which it may do orally, or in writing thereafter.

**11. TERMINATION**

We will not continue to do the Work if You fail to pay our bills, if You fail to provide us with adequate instructions, or if You indicate to us that we have lost Your confidence. We will give you at least fourteen (14) days notice of our intention to terminate our Agreement, and of the grounds on which the notice is based. You will be required to pay our charges for work done, and for expenses incurred, up to the date of termination.

You may terminate this agreement in writing at any time. If You do so, You will pay our charges and expenses incurred up to the time of termination.

**12. ENGAGEMENT OF ANOTHER LAWYER**

It may be necessary for us to engage, on Your behalf, the services of another lawyer to provide specialist advice or services, including advocacy services. We will consult with You as to the terms of that lawyer's engagement, but You may be asked to enter into a fee agreement directly with the other lawyer.

**13. PARTY AND PARTY COSTS**

If, in the proceedings to which this agreement relates, an order is made, requiring another party to pay our costs of the proceedings, that order will not affect Your liability to pay our costs and expenses under this agreement, but the amount recovered (if any) may be applied towards satisfaction of our charges and expenses.

It is possible that the Court may make an order that You pay another party's legal costs (if for instance You lose the case), these costs would be in addition to those payable to us under this agreement.

**14. GOODS AND SERVICES TAX**

Any cost estimate in the attached Schedule does not include goods and services tax ("GST"). In addition to any amount for professional costs as set out above, or estimated in the attached schedule, you must pay GST if applicable. This will increase those amounts by 10%. GST is payable by you at the same time as you pay our costs.

We will supply you with a tax invoice for the amount of GST at the same time as we give you our bill of costs, or upon request by you. The tax invoice will contain particulars as are required by law so that you can obtain an input tax credit for the amount of the GST you pay, if you are registered and are otherwise entitled to claim input tax credits.

\_\_\_\_\_  
For  
Shire of York

\_\_\_\_\_  
For  
CS Legal

## SCHEDULE TO COSTS AGREEMENT

Item 1      **Shire of York**  
                 **PO Box 22**  
                 **York WA 6302**

Item 2      6 May 2011

Item 3      **THE WORK**

The work You require us to do is:

- Respond to Appeal Proceedings Nos. 113 of 2010, 112 of 2010, 118 of 2010 and 120 of 2010), against Rosmill Pty Ltd in the District Court of Western Australia.

Item 4      **PRESENT ESTIMATE OF CHARGES AND EXPENSES IN TOTAL**

Our estimate of the cost of considering instructions, advising you, drafting Statement of Claim, considering Defence, making application for a pre-trial conference, attending upon pre-trial conference is:-

- |                          |                           |
|--------------------------|---------------------------|
| 1. Counsels fees         | TBA, if necessary         |
| 2. Solicitors costs      | \$11,000.00 - \$13,500.00 |
| 3. General disbursements | \$250.00                  |
| 4. Major disbursements   | TBA (Filing fees, etc)    |

It is impossible to predict the future. We will use our best endeavours to provide revised forward estimates of future costs when and if circumstances significantly change.

Item 5      **BASIS OF COSTS ESTIMATE**

<b>Nature of Work</b>	<b>Estimated Time Required</b>	<b>Estimated Value (excluding GST)</b>
Prepare, File and Serve Notice of Intention To Appear	1 hour	\$275.00
Prepare, File and Serve Answer in Response, if deemed necessary	4 - 8 hours	\$1,100.00 - \$ 2,200.00
Attendance at Directions Hearing (per appearance)	1 - 2 hours	\$ 275.00 - \$ 550.00
Prepare, File and Serve Appeal Books	4 - 8 hours	\$1,100.00 - \$ 2,200.00

Preparation for Hearing and Attendance at first day of Hearing	n/a	\$5,000.00
Attendance at subsequent days	n/a	\$2,000.00
Settling and Extracting Orders	1 - 2 hours	\$275.00 – \$550.00.
Attending to taxing costs, drawing bill of costs	3 hours	\$825.00

**Item 6 PROSPECTS OF SUCCESS**

Once we have considered all relevant papers, we will advise you of your chances of success.

Our estimate as to Your prospects is based upon Your version of what has occurred. This may vary from Your opponent's version. The person ultimately deciding the proceedings may prefer the evidence or argument of Your opponent. Success in litigation cannot be guaranteed.

\_\_\_\_\_  
For  
Shire of York

\_\_\_\_\_  
For  
CS Legal



This costs disclosure is provided pursuant to the Legal Profession Act 2008.

**1. BASIS OF CALCULATING PROFESSIONAL FEES**

**1.1 Hourly rates**

If the fee quoted in the offer provides for an hourly charge rate, we will charge the hourly rate (and proportionately for part of an hour) as set out in the offer for all work we carry out on your behalf.

In calculating the time spent doing work, our minimum charge is for 1 unit which represents 6 minutes. This minimum unit is applied irrespective of the actual time spent on an individual task.

**1.2 Cost Determination**

- The Legal Practitioner's (Magistrates Court)(Civil Jurisdiction) Determination 2008.

**2. Estimate of Legal Costs**

The estimate of the legal costs up to pre-trial conference is as set out in the schedule to the offer. Whilst it is not reasonably practicable estimate the total legal costs in the matter as presently instructed, we estimate the range of our total legal costs in the matter between \$2,500.00 and \$3,000.00

The major variables affecting our estimate are as follows:

- (a) the extent of investigation into the factual and documentary evidence supporting the claim;
- (b) the complexity of the legal and factual issues in the matter and those raised by the other party;
- (c) the extent of process of discovery including the any requirement for orders in relation to discovery;
- (d) the number of witnesses and any experts required;
- (e) the requirement to instruct counsel and counsel's costs of providing an opinion and acting in the matter;
- (f) requirements to attend pre-trial conferences, status conferences, mediation and directions hearings;
- (g) the revision of the terms of our retainer.

**3. Billing Intervals**

The billing intervals are as set out in clause 5 of our offer.

**4. Interest Rate**

The rate of interest on overdue legal costs will be the rate specified pursuant to the Supreme Court Act 1932 and shall not exceed the rate specified in the Legal Profession Act 2008

**5. Litigation**

**Legal Costs If You Are Successful**

A court may order, at the end of the litigation, that the unsuccessful party pay the successful party's costs. If you are successful in the matter, the court may order the other party to the litigation pay some of your costs. These costs are known as party and party costs and are calculated by applying the court scale applying to your matter.

If the court orders that the other party pay some of your legal costs our estimate is that you will recover approximately 50% of the total costs incurred by you in the matter.

If the court does order costs in your favour you must be aware that this order only gives you a right to recover some costs from the other party. It does not affect your responsibility to pay our legal costs.

The costs you recover may not cover the whole of our legal costs. If you cannot recover the costs from the other party (for example, if a party goes into liquidation or is bankrupted) then you will still be responsible for our legal costs.

### **Legal Costs If You Are Unsuccessful**

If you are unsuccessful in your Matter the court will most likely order that you pay some of the other party's legal costs. We estimate that this could be between \$15,000.00 and \$50,000.00.

In addition to the payment of the successful party's costs as estimated above, you will also be responsible for our legal costs.

**6. Contact Person**

If you wish to discuss legal costs please contact one of our directors, Richard Wensley and Narinder Jessy.

**7. Jurisdiction**

The law of Western Australia applies this cost agreement and both parties agree to submit to the jurisdiction of the courts of Western Australia.

**8. Legal Cost – Your Right to Know**

You have the right to –

- negotiate a costs agreement with us;
- receive a bill of costs from us;
- request an itemised bill of costs after you receive a lump sum bill from us;
- request written reports about the progress of your matter and the costs incurred in your matter (at no cost to you);
- apply for the costs agreement to be set aside;
- accept or reject any offer we make for an interstate costs law to apply to your matter;
- notify us that you require an interstate costs law to apply to your matter.

For more information about your rights, please read the fact sheet titled Legal Costs – your right to know. You can ask us for a copy, or obtain it from the Legal Practice Board (or download it from the website of the Legal Practice Board at [www.lpbwa.wa.org.au](http://www.lpbwa.wa.org.au)).

