

# INFORMATION ABOUT WORKING WITH US

The 'Rules of Conduct and Client Care for Lawyers' requires us to provide you with the following information. See our 'Terms of Engagement' for full details.

## What our fees are based on

When setting our fees we consider the following factors:

- estimate of fees we prepared for you, or our fee agreement
- fixed-fee part of the work (if appropriate)
- time and labour involved
- skill, specialised knowledge and seniority you need
- transaction's importance, complexity, risk, and results achieved
- urgency under which you need us to carry out the services
- experience and ability of the person advising you
- possibility that acting for you may prevent us acting for other clients
- reasonable costs of running a practice
- market fee for similar services.

We will always delegate work to staff at the best level appropriate to handle the work to ensure you get the best value from our time.

Please be aware that time spent by us on your behalf for the following may be charged:

- personal and telephone attendances
- correspondence (e.g. letters, faxes and emails)
- considering and researching the law and facts of your matter
- reading, considering and responding to incoming letters, papers and documents
- preparing documents and agreements
- correspondence with solicitors and third parties relevant to your transaction
- instructing agents and experts (where necessary)
- attendances on your behalf with third parties
- time spent travelling.

## We will estimate the fee for your work if you want us to

We are happy to give you an estimate of the likely costs of your transaction based on the information you give us about what you need.

We can generally estimate disbursement costs before beginning work.

Our estimates are given in good faith based on our understanding of the information provided to us. Sometimes the nature of the work changes or new information comes to light and our estimate will need to be reviewed. In these cases we will let you know as soon as possible and explain the reasons so we can obtain your further instructions.

## Responsibility for fees

Where more than one person is named as a client, the obligations of each person are joint and several.

Where the client is a company, trust or incorporated society, the directors, trustees or officers are personally liable for payment of our fees.

## We will bill you regularly

We will usually send you invoices monthly unless we have agreed a different arrangement.

If we are holding funds for you on trust, we will deduct from those funds any fees that we have invoiced you on any matter.

We charge interest on any amount overdue. Interest is calculated at the rate of 1.5% per month and if we are required to take action to recover any amount owing you will also be liable to pay all our costs including debt collectors and legal fees.

## If you have a complaint about us, we want to know

If we have failed to meet your expectations, please tell us. We take clients' complaints seriously and want to do what we can to fix the situation. We are committed to resolving any issues as soon as possible. If you are unhappy, we encourage you to talk to the person you are dealing with and see whether the problem is simply miscommunication. If your problem remains unresolved contact the Supervising Partner or firm management.

If you are still not satisfied with the way we have responded to your complaint, you can make a formal complaint to the New Zealand Law Society.

## Our professional indemnity insurance meets New Zealand Law Society standards

We hold professional indemnity insurance that exceeds the minimum standards specified by the New Zealand Law Society. Please ask us if you would like details of the minimum standards.

## Limit of Liability

Our liability in this transaction is limited to the value of this transaction or the sum obtained from our professional indemnity insurer, whichever is the lesser.

We do not maintain insurance for claims originating from North America (USA and Canada) and therefore our liability in relation to such claims (if any) will be zero.

## The New Zealand Law Society's Fidelity Fund

The New Zealand Law Society's Solicitors' Fidelity Guarantee Fund provides clients of lawyers with protection against theft by a lawyer, a lawyer's employee or agent. For more information about what the Fidelity Fund covers, go to [www.lawsociety.org.nz](http://www.lawsociety.org.nz).

It is important to understand that the Fidelity Fund does not provide compensation for loss of funds in respect of money instructed to be invested.

## The New Zealand Law Society's Client Care and Service Information

Set out below is the Law Society's Client Care and Service Information. Whatever legal services we provide, we must:

- act competently, in a timely way and in accordance with instructions received and arrangements made
- protect and promote your interests and act for you free from compromising influences or loyalties
- discuss with you your objectives and how they should best be achieved
- provide you with information about the work to be done, who will do it and the way the services will be provided
- charge you a fee that is fair and reasonable and let you know how and when you will be billed
- give you clear information and advice
- protect your privacy and ensure appropriate confidentiality
- treat you fairly, respectfully and without discrimination
- keep you informed about the work being done and advise you when it is completed
- let you know how to make a complaint and deal with any complaint promptly and fairly.

The obligations lawyers owe to clients are described in the 'Rules of Conduct and Client Care for Lawyers'. Those obligations are subject to other overriding duties, including duties to the Courts. If you have any questions, please contact us on (03) 377 2900 or email [law@mmlaw.co.nz](mailto:law@mmlaw.co.nz).

# TERMS OF ENGAGEMENT

Mortlock McCormack Law is a law firm engaged in the provision of quality and cost effective legal, business and personal solutions for our clients. We are proud of the work we produce and the partnerships we enjoy in our community and throughout New Zealand.

We place a high value on people and will do our utmost to protect our relationship with you. We are a socially responsible business, pursuing sustainable business practices and having regard for the environment.

We value our relationship with you and are committed to attending to your affairs diligently and providing you with an efficient, effective and professional service.

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BUSINESS BASED · PEOPLE FOCUSED

Our terms of business and what you can expect from us are set out below. Any work you instruct us to carry out will be on these terms. Your continued instructions indicate your acceptance of these terms.

## 1. EFFECTIVE DATE

These terms of engagement are effective from 1 November 2021 and supersede any previous editions. Together with our letter of engagement these terms will apply to the services we undertake on your behalf.

## 2. SERVICES

The services we will provide are outlined in our letter of engagement. You will receive a letter of engagement for every piece of work we carry out for you. We will not provide you with advice in respect of the quality or value of any investment you wish to make. You must consult an authorised financial advisor should you require financial or investment advice.

## 3. FINANCIAL

### 3.1. FEES

- (i) The fee we will charge or the manner in which it will be arrived at, is set out in our letter of engagement.
- (ii) If the letter of engagement specifies a fixed fee, we will charge this for the agreed scope of our services. Fees for work that falls outside that scope will be calculated based on the range of factors applied by the New Zealand Law Society including time, expertise, importance, urgency and results achieved. If it becomes necessary to provide services outside the agreed scope we will advise you as soon as reasonably practicable and provide an estimate of the further costs.
- (iii) If the letter of engagement specifies an estimate, we will do our best to charge no more than the amount estimated for the agreed scope of our services. When it becomes apparent that the costs are likely to exceed the estimate by more than 10%, we will advise you as soon as reasonably practicable and provide an estimate of the further costs.

3.2. If the letter of engagement specifies the hourly rates for the people who will be undertaking work on your behalf, we will calculate our fees for the agreed scope of our services based on the range of factors applied by the New Zealand Law Society including time, expertise, importance, urgency and results achieved. If you require our estimate of the likely cost of undertaking the agreed scope of our services, please contact the Partner responsible for your matter.

### 3.3. OFFICE SERVICE FEE

We may charge a separate office service fee to cover the costs incurred in operating our office, including but not limited to printing, photocopying and communication charges.

## 3.4. DISBURSEMENTS AND OFFICE EXPENSES

While providing services to you, we may have to pay third party costs like Court fees, rates, barristers' fees, and courier or travel costs. We call these costs "disbursements". We charge disbursements to you when the cost is incurred. Sometimes disbursements will be the most significant portion of our invoice, depending on your transaction. Our invoice will show the portion that is disbursements. We will notify you if any fees or disbursements need to be paid for in advance. We may also incur office expenses when we have to make payments to third parties on your behalf. Office expenses may include, but not limited to, search and registration fees, LIM charges, forms and precedents that incur a charge.

## 3.5. GST

Unless an exemption in the GST Act applies, GST is payable by you on our fees and disbursements.

## 3.6. INVOICES

We will invoice you:

- (i) monthly by way of interim invoices for ongoing work (unless some other arrangement has been reached)
- (ii) at the completion of a transaction
- (iii) upon termination of our engagement
- (iv) if we incur (or will incur) a significant disbursement

## 3.7. PAYMENT

Unless otherwise specified invoices are payable by the 20<sup>th</sup> day of the month following the date of the invoice. We may charge interest on any amount that is overdue. Interest will be calculated at the rate of 1.5% per month.

## 3.8. SECURITY/PREPAYMENT

We may ask you to prepay amounts to us or to provide security for our fees and expenses. You authorise us to:

- (i) debit against amounts pre-paid by you; and
- (ii) deduct any fees, expenses or disbursements for which we have provided an invoice.

## 3.9. THIRD PARTIES

We may at your request or with your approval invoice a third party. If that third party fails to pay you will be responsible for payment.

## 3.10. TRUST ACCOUNT

We maintain a Trust Account for all funds received from clients.

### 3.11. FUNDS ON DEPOSIT

If we hold funds on your behalf, those funds will not be placed on interest earning deposit if, in our view, it is uneconomic to do so. We determine that it is uneconomic to do so if the gross interest expected to be earned while the funds are on deposit will be less than \$50.00. We will not be able to place any funds on interest bearing deposit (except in the case of estates, charitable trusts or escrow purposes) without you first completing a Foreign Tax Residence Form as a requirement under the Automatic Exchange of Information/Common Reporting Standards (AEOI/CRS) regime. We will supply you with such forms when required. When we hold funds on deposit on your behalf we will be required to pass on that information to the Inland Revenue Department or our bank under the AEOI/CRS regime. Funds placed on interest bearing deposit will incur an administration fee of 5% of the gross interest earned.

### 3.12. SETTLEMENT MONEYS

For transactions where payment of money is due by you, we require cleared and non-reversible funds for the correct amount to be deposited no later than the morning of settlement. Proof of deposit must be supplied.

### 3.13. DORMANT BALANCES

If we hold a dormant balance for you we will make reasonable efforts to locate you to arrange for the dormant balance to be paid to you. We may deduct our reasonable costs of trying to locate you from the dormant balance. If the dormant balance is small and it is not economic for us to try to locate you we may take that dormant balance by deduction.

### 3.14. FEE RECOVERY

If we are required to take any action to receive payment of our fees, disbursements or expenses, we are authorised to use, only to the extent necessary to receive such payment, your private information (as that term is used in the Privacy Act 2020). You will also be liable to pay all costs including debt collectors and legal fees incurred in taking action.

## 4. ANTI-MONEY LAUNDERING POLICY

We are required to be compliant with all obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“the AML/CFT Law”). This means that any work we do for you will be subject to the AML/ CFT Law and we may be requesting further information from you as part of our due diligence obligations. Part of our obligations under the AML/CFT Law will also involve reporting certain types of transactions to the Department of Internal Affairs and the New

Zealand Police. For further information please speak to us directly and/or visit the section on our website in relation to the AML/CFT Law.

## 5. RETENTION OF FILES AND DOCUMENTS

We store all files for at least seven years. You authorize us (without further reference to you) to destroy all files and documents (other than documents we hold in safe custody) at the end of the storage period or earlier if we have converted those files and documents to an electronic format.

## 6. CONFLICTS OF INTEREST

We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises we will advise you and thereafter follow the requirements and procedures set out in the New Zealand Law Society’s Rules of Conduct and Client Care for Lawyers.

## 7. DUTY OF CARE

Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this.

## 8. CONFIDENTIALITY

We will hold in confidence all information concerning you or your affairs acquired during the course of acting for you. We will not disclose any of this information to any other person except:

- 8.1. To the extent necessary or desirable to enable us to carry out your instructions; or
- 8.2. To the extent required by law or by the New Zealand Law Society’s Rules of Conduct and Client Care for Lawyers.

Confidential information will, as far as practicable only be made available to those persons within our firm who are providing services to you.

We will not disclose confidential information that we have in relation to any other client to you.

## 9. TERMINATION

- 9.1. You may terminate our engagement at any time. We may terminate our engagement for good cause after giving notice to you specifying the grounds for termination. Good cause includes:
  - (i) Instructions that require us to breach any professional obligation
  - (ii) Inability or failure to pay our fee at the appropriate time
  - (iii) Misleading or deceiving us in a material respect
  - (iv) Failing to provide instructions in a sufficiently timely way

(v) Adopting, against our advice, a course of action that we believe is imprudent and may be inconsistent with our fundamental obligations.

(vi) Conduct towards an employee that amounts to bullying, discrimination, harassment, threatening behaviour or violence.

- 9.2. If our engagement is terminated, you must pay all fees, disbursements and expenses due to the date of termination.
- 9.3. Any charges incurred in the retrieval of files or documents from storage will be payable by you.

## 10. COMMUNICATIONS AND PRIVACY

In our dealings with you we will collect and hold personal information about you, including your contact details. We will use that information to carry out our services. You will advise us if any of your contact details change. You agree that we may provide you with information that may be relevant to you, from time to time, such as newsletters and bulletins. At any time you may request that this not be sent to you. We will provide to you, on request, copies of all documents to which you are entitled under the Privacy Act 2020, or any other law. We may charge you our reasonable costs for doing this.

## 11. ELECTRONIC COMMUNICATIONS

If you ask us to transmit any document or communication to you or any other party electronically, you indemnify us in respect of any claim you may have as a result of any unauthorised copying, recording, reading or interface with that document after transmission, for any delay or non-delivery of any document and for any damage caused to your system or any files by the transmission (including by a computer virus).

## 12. MORTLOCK McCORMACK LAW LIMITED

Mortlock McCormack Law Limited trades as a company. A person referred to as a partner indicates the person is a leader in the business. Details of the directors of Mortlock McCormack Law Limited can be found on the Companies Office.

## 13. GENERAL

These terms apply to any transaction whether or not we send you another copy of them. We are entitled to change these terms from time to time, in which case we will display our amended terms on our website. New Zealand law governs our relationship with you and New Zealand courts have non-exclusive jurisdiction.