



# TECHNOLOGY AND NEW BUSINESS MODELS IN SUCCESSION LAW PRACTICE

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# With thanks

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## Disclaimer

This presentation covers legal and technical issues in a general way. It is not designed to express opinions on specific cases. It is intended for information purposes only and should not be regarded as legal advice. Further advice should be obtained before taking action on any issue dealt with in this presentation.

# Overview

- ❖ Fixed pricing and our cost obligations
- ❖ Marketing and the legal profession
- ❖ Things to consider when offshoring



# Cost obligations when using fixed pricing

# Fixed pricing – why do it?



- ❖ Argument that time costing rewards inefficiency and over servicing
- ❖ Less risk in attracting attention from enforcement bodies?
- ❖ Complaints about fixed pricing arises due to the failure to properly provide a detailed scope of work or details containing contingencies that might affect the scope of work
- ❖ Counter-argument for fixed pricing is that it is impossible to scope out an entire matter from the outset
- ❖ Consider scoping work in 'stages'
- ❖ What is 'value pricing'?
- ❖ Overview now, debate later

# Fixed pricing – some guidelines



- ❖ Part 3.4, *Legal Profession Act 2007* (QLD)
- ❖ Legal Services Commission, 'Regulatory Guide 7: The Application of the Australian Consumer Law to the Provision of Legal Services', Version 3, 16 September 2013.
- ❖ Legal Services Commission, 'Regulatory Guide 9: Fixed Fee Costs Agreements', Version 1, 29 April 2014

# Fixed pricing and disclosure requirements



- ❖ Section 308 LPA – Legal practitioner to disclose to a client the basis on which they propose to calculate their legal costs.
- ❖ Section 310 LPA – Disclosure to be in writing before, or as soon as reasonably practicable after client's instructions accepted.
- ❖ Section 328 LPA – Costs agreement to be fair and reasonable.
- ❖ Costs agreement do not protect lawyers from disciplinary action for issues such as overcharging or excessive costs – *D'Allessandro v Legal Practitioners Complaints Committee* (1995) 15 WAR 198

# Fixed pricing and disclosure requirements



- ◆ Changes in scope requires a practitioner to provide a revised estimate of the total legal costs and likely future costs as assertions that they 'should have been aware' of changes to the pricing does not hold much water – *Leneham v LSC* [2018] QCA 133

# Fixed pricing, billing and itemisation



- ◆ Section 330(5) LPA – Not essential whether a bill be itemised or as a lump sum
- ◆ Section 330(1) LPA – If requested, however, an itemised bill must be provided within 28 days and fixed pricing arrangements are not exempt from this
  - ◆ Where timing costing is not used, it is therefore important for practitioners to consider alternative ways in measuring the actual work and physical costs associated with a matter
  - ◆ Section 300 LPA – An itemised bill is ‘a bill stating in detail how the legal costs are made up, in a way that would allow the legal costs to be assessed’
- ◆ Level of detail varies on a case by case basis but can depend on things such as:
  - ◆ The nature of the matter
  - ◆ The way in which costs are to be calculated
  - ◆ The sophistication level of the client

*Clayton Utz Lawyers v P & W Enterprises Pty Ltd [2011] QDC 5*

# Fixed pricing, billing and itemisation



- ❖ An itemised bill should include:
  - ❖ The basis for the charges for the work done, including:
    - ❖ Where costs are determined with reference to time, details of the time taken;
    - ❖ Where calculated on a scale, enough detail to identify what items of scale are applied to particular items of work;
    - ❖ Where a fixed fee arrangement, sufficient detail to show how and what extent the scope has been carried out in exchange for what costs are being charged
  - ❖ Detail around each item done and the person completing it
  - ❖ A chronological dating of each item
  - ❖ Where a scale or time calculated basis, the amount charged for each item of work

*Golder Associates Pty Ltd v Challen [2012] QDC 11*

# Fixed pricing, billing and itemisation



- ❖ Legal costs should be confined to work performed by a qualified legal practitioner
- ❖ Work that could have been performed by a non-legally qualified employee, should only be charged in the same way as any other person performing that type of work – *Legal Services Commissioner v Gould* [2017] QCAT 205; *Council of Queensland Law Society v Roche* [2003] QCA 469
- ❖ Consider what this means if an itemised bill is required

# Fixed pricing and overcharging



- ❖ Section 343 LPA – Overcharging or charging excessive costs can amount to unsatisfactory professional conduct or professional misconduct where it is so excessive as to clearly establish wilful or reckless behaviour
- ❖ Whether costs are reasonable and fair requires an analysis of some factors, including (*D'Alessandro v Legal Practitioners Complaints Committee*):
  - ❖ The amount that is or would likely be taxed
  - ❖ The skill, labour and responsibility displayed by the practitioner and quality of work
  - ❖ The complexity or difficulty of the matter or the amount or value;
  - ❖ The amount of time spent by the practitioner or place where the services were provided
  - ❖ The outcome of the matter
  - ❖ Any costs agreement entered into

# Fixed pricing and overcharging



- ❖ Law Society of New South Wales v Foreman (1994) 34 NSWLR 408, per Kirby

P:

*"No amount of costs agreements, pamphlets and discussion with vulnerable clients can excuse unnecessary over-servicing, excessive time charges and over-charging where it goes beyond the bounds of professional propriety..."*

# Bringing it together

- ❖ Estate planning
- ❖ Estate administration
- ❖ Estate litigation



# Fixed pricing or value pricing

- ❖ Ron Baker
- ❖ ‘Value’ given to clients
- ❖ Idea is to identify value upfront as opposed to ‘after-the-fact’
- ❖ Idea is to price based on what benefits clients receive as opposed to costs of running a business
- ❖ Contentious?



# Tiered pricing?

- ❖ Different level of services for the same legal advice?
- ❖ Letting clients pick the amount of service reduces over-servicing?
- ❖ Too confusing?
- ❖ Potentially manipulative for clients making choices?



# Marketing for the legal profession

# Australian Solicitors Conduct Rules



- ❖ The Australian Solicitors Conduct Rules [ASCR] do however place a positive duty on practitioners to ensure that any advertising, marketing or promotion is not:
  - ❖ False
  - ❖ Misleading or deceptive or likely to mislead or deceive
  - ❖ Offensive
  - ❖ Prohibited by law
- ❖ This is further clarified by prohibiting practitioners to create an impression of specialist expertise and must not advertise or authorise advertising suggesting specialist expertise, unless the solicitor is a specialist accredited by the relevant professional body

# Email as king



- ❖ Per 2017 Email Marketing Industry Census
- ❖ Everyone uses email where social media focuses on separate groups (Facebook, Instagram, Pinterest, Snapchat and TikTok)
- ❖ Email marketing is permission-based (ever see the 'tick to receive offers')
- ❖ Social media companies control their own content – you control your own emails
- ❖ Automated marketing technology (e.g. Zapier)
- ❖ Open up personalisation
- ❖ Tried and true method of nurturing leads and building relationships
- ❖ Video marketing via email and 'AI' in personalising emails

# SEO otherwise known as search engine optimisation



- ❖ #
- ❖ Using keywords for search engine optimisation
- ❖ Front page v anything other than the front page
- ❖ More clicks, higher up
- ❖ Blog posts
- ❖ Waiting area and more clicks
- ❖ Professions intended to assist with boosting this

# Standing out in a sea of same-same

- ❖ Differentiate your content
- ❖ In-print your personality and passion
- ❖ More than a blog – it is everything that represents you and/or your business



# Things to consider when offshoring

# Readings

- ◆ Contact Carrie
- ◆ Host of articles available



# Jurisdiction



- ❖ Technology-based solutions has meant not only that more people can work from home, but that more people can work from even more remote locations
- ❖ Various offshore providers with branches in various jurisdictions
- ❖ Where's appropriate?
  - ◆ Education and command of the English language
  - ◆ Time difference
  - ◆ Philippines, India and South Africa
  - ◆ More developed nations such as New Zealand or United Kingdom
  - ◆ Use own ex-staff based overseas

# Challenges



- ❖ Perceived reduction in quality by consumers and even those utilising offshore
- ❖ Why invest in offshoring when you can invest with personal here?
- ❖ Employment issues in Australia same as offshore (i.e. high turnover)
- ❖ Quality assurance and training
- ❖ Operating as a team, even if virtually

# Cultural considerations



- ❖ Understanding the culture of your offshore team as well as their own public or religious holidays
- ❖ Critical in communication and avoiding misunderstandings
- ❖ Understanding the lifestyle of those offshore
- ❖ Different cultures may interpret the same action differently – so be straight forward and clear as some team members may be more timid (highlighted through virtual nature)
- ❖ Understanding the family structure of team members

# Office issues

- ❖ Electricity can cut out
- ❖ Internet may have shortages
- ❖ Designing the right space of offshore team members



# Confidentiality and privacy



- ❖ The critical point in relation to offshore employment involves consideration of how confidentiality is maintained from a practical perspective
- ❖ Most seat leasing entities have employment agreements, workplace policies and IT security protocols and support equivalent to what onshore workplaces would have
- ❖ Debate going through the process or engaging a third party to assist (who may already have the mechanisms in place)

## Contact details



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