

Our Writer: Mark Lowis
Email: mark@bpladvisory.com.au
Our ref: 20220939

19 August 2022

Berrinba Superannuation Pty Ltd as trustee for Berrinba Superannuation Fund
215 Gilmore Road
Berrinba QLD 4117



By email: david.crase@crase.com.au

Dear Frank

Costs Agreement - Structuring

Welcome to BPL Advisory.

We thank you for your instructions to act for Berrinba Superannuation Pty Ltd as trustee for Berrinba Superannuation Fund (**you**).

Scope of Work and Fees

1. BPL will provide the following legal services to you:

Work	Fixed Fee (including GST)
Item 1 (a) Carry out a review of the existing structure and proposed development activities, including relevant financial information; (b) Consider the alternatives available for structuring the property development – in particular, the revenue and taxation implications of the various structuring options available; and (c) Provide taxation, structuring and duty advice in respect of the optimum structure to carry out the property development based on the client's stated objectives.	\$8,800

2. Our total fixed professional fees to carry out our Work will be **\$8,800 including GST**.

Disbursements

3. In addition to our professional fees, you are also required to pay any other costs, outlays or expenses we incur on your behalf during the course of your matter (**Disbursements**) – e.g. search fees, lodgement fees, postage, courier and messenger fees.
4. At this stage, we do not anticipate any Disbursements being required.

Exclusions

5. The following is excluded work, outside the scope of our Work:
 - a. accounting, valuation or financial advice; or
 - b. any other advice not otherwise specified as being provided as part of our Work.

Fixed Fee Arrangements

6. Our fixed fee pricing structures are developed to provide you with cost certainty. We rely on your instructions and the facts disclosed to us at the time of entering into this Cost Agreement in order to provide these quotes.
7. Our prices do not include any work which must be carried out by us as a consequence of a material change in your instructions or the facts and circumstances relevant to your Work. We will notify you if we believe that any work you request us to complete falls into this category. We will be pleased to provide a further quote for that work as required.

Third Party Service Providers

8. We confirm that your professional adviser, David Crase of Crase Consulting Group Pty Ltd, may assist us in this matter (**Professional Adviser**).
9. This Costs Agreement contains an authority:
 - a. for the Professional Adviser or their associates to instruct us on your behalf, and to provide information and documentation to us on your behalf; and
 - b. for BPL to liaise directly with the Professional Adviser, and to disclose your information and documentation (including any document or advice forming part of the Work) to the Professional Adviser.
10. Please let us know if you do not wish to provide this authority.

Next Steps

11. Please arrange for **\$8,800** to be paid into our trust account in anticipation of our professional fees and Disbursements.
12. You can do so by forwarding us a cheque made payable to BPL Advisory Law Practice Trust Account or by arranging an EFT into our trust account, the details of which are:

Bank:	National Australia Bank
Account Name:	BPL Advisory Law Practice Trust Account
BSB:	084004
Account Number:	808520770

Please use the reference "20220939"

13. To accept this Costs Agreement, please:
 - a. sign this costs agreement either electronically or in paper format and return it to us; and

b. transfer the amount requested above to our trust account.

We will commence work on your matter once both actions above are completed.

14. Please note that if you allow us to provide you with legal services (notwithstanding item 13 above), and we agree to do so, you will be taken to have accepted the terms set out in this document.

If you wish to discuss or clarify the terms of the Costs Agreement with us, please contact the writer.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Lewis'.

Mark Lewis

Director

BPL Advisory

Acceptance Form

Berrinba Superannuation Pty Ltd as trustee for Berrinba Superannuation Fund (**You**)

This is an offer to enter into a costs agreement under the *Legal Profession Act 2007*(Qld) with BPL Advisory Pty Ltd ABN 16 630 886 190 and incorporates the following into the contract to provide legal services:

1. the engagement letter; and
2. Annexure A – terms and conditions.

If you accept this offer, it means you will be bound by the terms of it.

Signed for and on behalf of Berrinba Superannuation Pty Ltd as trustee for Berrinba Superannuation Fund:*

Frank Raymond Boyes

(Signature)

(Name)

(Date)

* Where the person signing on behalf of the client (or otherwise accepting this costs agreement in accordance with the Engagement Letter) is other than the named client, that person warrants they hold authority to sign on behalf of the client.

Annexure A Terms and Conditions

1. Definitions and Interpretation

1.1 Definitions

In this Costs Agreement, the following definitions apply:

- (a) **BPL** means BPL Advisory Pty Ltd ACN 630 886 190;
- (b) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Queensland;
- (c) **Costs Agreement** means these Terms and Conditions and the Engagement Letter;
- (d) **Engagement Letter** means the engagement letter provided by BPL to you in conjunction with these Terms and Conditions;
- (e) **Disbursements** means any costs or expenses incurred by BPL in connection with the Work;
- (f) **Fees** means the professional fees set out in the Engagement Letter;
- (g) **GST** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (h) **LPA** means Legal Profession Act 2007 (Qld);
- (i) **Professional Adviser** means:
 - (i) any person listed in the Engagement Letter as providing services to You, including;
 - (ii) any other person agreed between BPL and You as being a Professional Adviser for the purposes of this Costs Agreement; and
 - (iii) each employee, director, associate, contractor or other nominated representative of a person satisfying (a) or (b) above;
- (j) **Work** means the scope of work described in the Engagement Letter; and
- (k) **You** mean the entity defined as same in the Engagement Letter.

1.2 Interpretation

- (a) A reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Costs Agreement.
- (b) A reference to a party to the Costs Agreement or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a document or agreement (including a reference to the Costs Agreement) is to that document or agreement as amended, supplemented, varied or replaced.

- (e) A reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (f) If any day on or by which a person must do something under the Costs Agreement is not a Business Day, then the person must do it on or by the next Business Day.
- (g) A reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity.
- (h) A reference to 'month' means calendar month.
- (i) A reference to '\$' means Australian dollars unless specified otherwise.

2. Fees and Disbursements

- (a) You agree to pay BPL the Fees as outlined in the Engagement Letter.
- (b) Where the Engagement Letter provides for any fee to be charged on an hourly basis, you agree that those Fees will be charged on an hourly basis, at the rate set out in the Engagement Letter. BPL may, by written notice, increase the hourly rate.
- (c) Charging on the basis of time taken to do a task may result in a charge which is different from charging on the basis of a set fee to do that task.
- (d) To calculate time charged, BPL operates on 6 minute units. The cost of each unit is 10% of the hourly rate specified in the Engagement Letter. If the time taken is less than six minutes, one unit (six minutes) is charged. If the time taken is not an exact multiple of six minutes, the time charged is rounded up or down to the next multiple of six minutes.
- (e) You agree to pay all of BPL's Disbursements incurred while carrying out the Work as set out in the Engagement Letter. BPL may ask for money to be paid into trust for anticipated Disbursements.
- (f) Unless BPL advises you otherwise, BPL may incur GST-free costs as your agent. BPL may also incur non-GST free costs as your agent, in which case BPL will give you a tax invoice from the relevant supplier, so you can claim any input tax credits.
- (g) Other Disbursements may be incurred by BPL other than as your agent, for example:
 - (i) expert consultants', accountants', engineers' or medical specialists' fees, when engaged by BPL;
 - (ii) travel and accommodation;

- (iii) search fees, outsourced document production, filing and lodgement fees that are not GST-free; and
 - (iv) investigators' and agents' fees.
- (h) The amount you pay BPL for the Disbursements in clause 2(g) (before adjustment for GST under clause 3) is the amount incurred by BPL on your behalf, less any GST input tax credits claimable by BPL.

3. GST

Fees and Disbursements in respect of the Work are generally subject to GST (which at the date of this document is 10%) if there is sufficient connection with Australia. If so, BPL is required to remit GST and (excluding those costs incurred as your agent) BPL will charge the applicable GST in addition to the GST exclusive amount of those Fees and Disbursements.

4. Extraordinary items

BPL will seek your express authority before incurring any cost which is not normally incurred in the performance of services similar to the Work. Some or all of these costs may not be recoverable from another party, even in circumstances when another party may be liable to pay your costs.

5. Accounts

- (a) BPL generally issues accounts on a monthly basis and at completion of the Work.
- (b) Under fixed fee arrangements, BPL may issue interim invoices to you, particularly where the matter has reached a significant milestone or stage of completion. For example, BPL may issue an invoice for 90% of BPL's fixed fee in circumstances where the only material steps remaining in the engagement are the execution and return of relevant documents
- (c) You agree to pay your account within 7 days of the date of issue.
- (d) BPL reserves the right to charge interest on overdue accounts at the rate equal to the Cash Target Rate set by the Reserve Bank of Australia (as at the date the account was rendered) plus 2%. This is a benchmark rate of interest.
- (e) You authorise BPL to pay an account from money held in trust on your behalf on account of Fees and Disbursements, if BPL notifies you in writing that trust money will be transferred from trust to pay the account.
- (f) You authorise BPL to send accounts to you electronically.

6. Your Rights

- (a) You have the right to:
 - (i) negotiate this Costs Agreement with BPL;
 - (ii) receive a bill of costs from BPL;
 - (iii) request an itemised bill of costs after you receive a lump sum bill from BPL;
 - (iv) request written reports about the progress of your matter and the costs incurred in your matter;
 - (v) apply for costs to be assessed within 12 months if you are unhappy with BPL's costs;
 - (vi) apply for this Costs Agreement to be set aside;
 - (vii) accept or reject any offer BPL makes for an interstate costs law to apply to your matter; and
 - (viii) notify BPL that you require an interstate costs law to apply to your matter.
- (b) For more information about your rights, please read the fact sheet titled *Legal Costs – Your Right to Know*. You can ask BPL for a copy, or obtain it from the Queensland Law Society or download it from their website.

7. Multiple Clients

- (a) When acting for more than one person in providing the Work, BPL acts in the best interests of each person. If that becomes impracticable or impossible, BPL will advise each person to seek separate advice.
- (b) When instructions are requested, BPL must seek the instructions of all persons, except:
 - (i) on relatively insignificant matters, when BPL may act on the instructions of one person; or
 - (ii) when BPL receives instructions from one person, and that person indicates that those are the instructions of all persons.
- (c) If a letter of advice is sent to one person, and that advice applies equally to the other person or persons, BPL may send a copy of that letter to the other person or persons.
- (d) All persons are jointly and severally responsible for BPL's Fees and Disbursements. That means all persons are responsible for the whole amount but also, each person is individually responsible for the whole amount. Although you may decide the proportion that each person must pay for the Fees and Disbursements, BPL is not bound by any decision or agreement between you.

8. Duties

- (a) Your duties are:

- (i) to give BPL full, frank and timely disclosure of all information which might influence BPL's decision to act for you or carry out the Work;
 - (ii) to not deliberately withhold information about the Work from BPL;
 - (iii) to be prompt and thorough in providing instructions to BPL;
 - (iv) to keep BPL informed of your contact details and notify BPL of any changes to those details; and
 - (v) to ensure that at all times you, or someone with knowledge of your matters, is available to give instructions and meet with BPL, particularly at key milestones in performance of the Work;
- (b) BPL's duties are:
- (i) to carry out the Work with professional skill and diligence;
 - (ii) to keep you informed of the progress of the Work, and give a progress report when asked; and
 - (iii) to advise you of any substantial change to the Costs Agreement.

9. Termination

- (a) You may terminate this Costs Agreement at any time by giving written notice to BPL.
- (b) BPL may terminate this Costs Agreement by giving at least seven days written notice to you for any reason, including if:
 - (i) you breach the Costs Agreement;
 - (ii) you instruct BPL to act unlawfully or unethically;
 - (iii) you do not give BPL adequate instructions or fail to respond to BPL's requests for further guidance or particulars within 21 days of BPL's request or make material misrepresentations about facts relevant to BPL's Work;
 - (iv) you tell BPL that you have lost confidence in BPL;
 - (v) you lose legal capacity;
 - (vi) you do not pay accounts or do not pay money into BPL's trust account on account of anticipated fees and costs when requested to do so; or
 - (vii) BPL have an interest in a matter for another client that is adverse to your interests.
- (c) If this Costs Agreement is terminated by either you or BPL, you must pay the part of BPL's Fees that BPL reasonably estimates has been incurred in respect of the Work provided to you up to the date of termination, plus fees for Disbursements, subject to your right to a costs assessment.

- (d) Upon termination, BPL may retain possession of your file until all outstanding Fees and Disbursements have been paid.

10. Australian advice only

- (a) BPL is only responsible for the legal advice BPL gives about Australian laws and regulations.
- (b) During the term of BPL's engagement you may require BPL to obtain advice from law firms in non-Australian jurisdictions about laws and regulations in those jurisdictions. BPL does not accept any responsibility for the content of that advice.

11. Qualified Advice

- (a) If the advice given by BPL to you is based on assumptions, qualifications or both, those assumptions and qualifications will be set out in the advice.
- (b) Once the advice is given, BPL is not liable for any part of the advice that is then found to be incorrect due to a later change in events, further information being given, further assumptions being made or assumptions on which the advice was based proving incorrect.

12. Reliance on advice

- (a) BPL's advice is given exclusively to you.
- (b) BPL is not responsible to anyone else, whether in negligence or otherwise, for any loss suffered by them as a result of them relying on BPL's advice to you.

13. Acknowledgement

- (a) This document is an offer to enter into a Costs Agreement.
- (b) You acknowledge that you are advised, and have had the opportunity, to seek independent advice about this Costs Agreement.

14. Limitation Liability

- (a) To the extent permitted by law, if BPL are liable to pay damages to you and if you or any other person (including other advisers to you) have contributed to the loss you suffered, the damages payable by BPL shall not exceed the amount that would ultimately be payable by BPL if:
 - (i) the damages payable by BPL were reduced by the amount that they would be if legislation providing for apportionment of damages in the case of contributory negligence applied to your claim;
 - (ii) no exemption or limitation of liability applies to that person; and

- (iii) you joined every person who was liable to pay you damages in respect of your loss, BPL obtained an order for contribution against each of them and they paid you the full amount of their contribution.
- (b) Subject to clause 14(c), you agree that BPL's liability for any loss or damage you may suffer in connection with the Work (however caused, including by BPL's negligence) is capped at \$1.5 million. This cap applies to any single or cumulative claims by you, and you agree BPL may plead this limitation of liability in defence to any claims you may bring against BPL for any such loss or damage.
- (c) The *Competition and Consumer Act 2010* (Cth) (**CCA**) provides that there are certain non-excludable guarantees in relation to supply of services to consumers. However, in certain circumstances, the CCA permits suppliers of services to limit their liability for failing to meet such a guarantee to supplying the services again, or paying the cost of having the services supplied again.
- (d) Clause 14(c) only applies to guarantees under the CCA and does not affect your ability to make a claim against BPL for breach of contract or negligence, in which case the limitation in clause 14(b) applies.
- (e) For the purposes of this clause 14:
 - (i) 'you' includes any person to whom BPL is liable to pay damages; and
 - (ii) 'damages' includes any similar liability (such as an obligation to pay compensation).

15. Retention of Records

- (a) Subject to this clause, documents relating to the Work to which you are entitled will be retained by BPL for seven years after this engagement ends, unless you instruct us to deliver them to you or someone else. After that time, the documents will be destroyed.
- (b) Once the Work is finalised, unless otherwise agreed BPL will return to you any original documentation BPL may have received from you during the engagement.
- (c) Trust records will be kept for a period of seven years. Documents such as Wills and Powers of Attorney will be retained in safe custody for 100 years, subject to any direction from you otherwise.
- (d) You acknowledge and agree that:
 - (i) if you want a hard copy of the file, you have 30 days after the date of BPL's final account to request in writing that BPL give you a copy. BPL will provide a hard copy of your file containing

documents to which you are entitled, at no charge;

- (ii) if you do not make a written request, BPL will convert the file from a hard copy to an electronic format for storage and retention purposes. BPL will then destroy the hard copy of the file; and
- (iii) BPL will retain the electronic copy of the file during the seven year period mentioned above. If at any time during that period you require access to and a copy of the file, BPL will provide you with an electronic copy. BPL are not obliged to print a hard copy of an electronic copy of the file for provision to you. If you want a hard copy of the electronic file, you will pay BPL's reasonable photocopying costs to do so. BPL will advise you in writing of the expected copying costs to be incurred.

16. Lien or Suspension of Work

16.1 Lien

- (a) BPL has a lien on all documents, funds and records in any form whatsoever in BPL's possession until payment in full of all BPL's tax invoices for all matters in respect of which you have retained BPL; and
- (b) BPL is entitled to retain for BPL's records all documents which BPL gives you, whether owned by BPL or not.

16.2 Suspension of work

- (a) If payment of part or all of a tax invoice is outstanding for 30 days, BPL will cease acting on Your legal matters until payment is received in full on all BPL's tax invoices for all matters in respect of which you have retained BPL.
- (b) BPL will notify you prior to ceasing work on any of your matters.
- (c) You agree to indemnify BPL for any losses you or third parties may suffer as a result of BPL ceasing to act for you.

17. Privacy Collection Statement

- (a) BPL may collect, use and disclose personal information about you.
- (b) BPL collects personal information directly from you as part of performing the Work for you and from third parties who assist BPL with its business.
- (c) BPL uses and discloses personal information collected about you for the purposes of doing the Work for you, facilitating internal business operations (including the fulfilment of any legal and regulatory requirements) and giving you other information that may be of interest to you.

- (d) BPL may also disclose your personal information to its related entities, affiliated organisations, service providers and other agencies (**Providers**) who assist BPL in providing the services to you.
- (e) If personal information given to BPL is incomplete or inaccurate, it may delay BPL's internal business operations and BPL may not be able to effectively work with you or perform the Work.
- (f) BPL's privacy policy has detailed information on how:
 - (i) BPL uses, discloses and secures your personal information;
 - (ii) You access and seek correction of your personal information;
 - (iii) You complain about privacy related matters; and
 - (iv) BPL responds to complaints.
- (g) You may obtain a copy of BPL's privacy policy from BPL's website or by contacting the Privacy Officer at BPL at info@bpladvisory.com.au.

18. Ownership and Use of Work

- (a) Advice and documentation prepared by BPL in relation to a specific transaction must not, without BPL's prior written consent, be used or relied on by:
 - (i) you in relation to any other matter or transaction; or
 - (ii) any other person or entity.
- (b) BPL has and retains ownership of, and copyright in, all advices and other documents prepared in the course of BPL's engagement other than documents prepared by external consultants or contractors.
- (c) You may use such advices and documents prepared in relation to the Work for which they were prepared but must not, without BPL's prior written consent:
 - (i) reproduce or use them in relation to any other transaction or matter; or
 - (ii) provide them to any other person or entity.
- (d) BPL is not responsible to you or any other party for any loss incurred in connection with changes made to a document that BPL provides to you unless BPL has specifically approved those changes.

19. Promotional Material

You authorise BPL to disclose that BPL acts for you in BPL's promotional material.

20. Problems or Complaints

- (a) If you experience a problem with the performance of the Work, wish to discuss legal costs or wish to make a complaint about an account, please contact the Director.
- (b) If you are still not satisfied with the way the problem has been resolved, you may contact the Queensland Law Society on (07) 3842 5842 or GPO Box 1785, Brisbane, Queensland 4001.
- (c) BPL suggests you obtain independent legal advice about remedies in a dispute about the Costs Agreement.

21. Professional Adviser

- (a) You authorise your Professional Adviser to:
 - (i) act as Your agent;
 - (ii) communicate with BPL about the Work;
 - (iii) provide such information and documentation to BPL as requested by BPL from time to time; and
 - (iv) give BPL instructions on Your behalf.
- (b) You authorise BPL to:
 - (i) liaise with your Professional Adviser for the purposes of BPL carrying out the Work;
 - (ii) accept any documentation, information, advice, requests, directions or instructions from a Professional Adviser; and
 - (iii) disclose any of your documentation, information, data or particulars to each Professional Adviser; and
 - (iv) provide any document or advice forming part of the Work to the Professional Adviser.
- (c) You warrant that unless you specifically advise BPL otherwise, any instructions provided by a Professional Adviser on your behalf are true and correct instructions. You acknowledge that BPL will carry out the work on the basis of those instructions unless You advise BPL otherwise.
- (d) You acknowledge that:
 - (i) communications between You, BPL and the Professional Adviser may be the subject of legal professional privilege and as such, should remain confidential; and
 - (ii) that legal professional privilege may be waived if You or a Professional Adviser:
 - (A) discloses any communication to any third party; or
 - (B) refers to the existence of any communication in any non-confidential document,

even if that disclosure is accidental or inadvertent.

22. Notice

22.1 Giving notice

- (a) This clause applies to any notice or communication that the Costs Agreement requires to be in writing.
- (b) You or BPL may only give a notice or communication to each other that is:
 - (i) signed on behalf of the sender;
 - (ii) addressed to the recipient at their address or fax number listed in this Costs Agreement or otherwise notified in writing to the sender; and
 - (iii) sent by one of the methods listed in clause 22.2.

22.2 Delivery method

A notice or communication is given as follows:

Delivery Method	Duly Received
Personal delivery	When it is personally delivered
Sent by registered post or express post	On the 3 rd Business Day after posting by registered post.

Delivery Method	Duly Received
	On the next Business Day after posting by express post.
Courier	On the day that the courier records delivery of any notice sent by courier.
Transmission by email	On the day of transmission by email.

23. Consent

You consent to receiving and executing this Costs Agreement electronically.

24. General

- (a) This Costs Agreement is governed by the laws of Queensland.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.
- (c) A clause or part of a clause of the Costs Agreement that is illegal or unenforceable may be severed from the Costs Agreement and the remaining clauses or parts of the clause continue in force.