

# K M SPLATT & ASSOCIATES

## CLIENT INFORMATION BROCHURE

### RETAINER AND COSTS

The issue of our retainer costs and is dealt with in our solicitor-client agreement.

We confirm that we will be acting for you on a "speculative" basis which means that we undertake not to render an account for professional costs or outlays unless and until the matter is successfully concluded.

We repeat our advice that there can be no guarantee of success in any litigation matters. Approximately 95% of cases settle without proceeding to a Court hearing. If you are successful in your action then the Defendant will sometimes be ordered to pay your party/party costs, in addition to any award of damages (previously discussed).

### ONLY RETAINED FOR YOUR CLAIM

Please also note that spouses of injured persons are entitled to claim for loss of consortium in certain circumstances. Please note that we are only retained in respect of your claim and no one else's claim. If you have a spouse who wishes to enquire about a claim then that person should make enquiries with us separately.

### CONFIDENTIALITY

In order to ensure Solicitor/Client confidentiality we should only communicate with our client. However, if you want us to communicate with an agent (eg spouse) please confirm in writing the details of that person.

### OUR SUCCESS RATE

Apart from a few people who have submitted claims which have subsequently been found to be fraudulent or not credible we have had a very high success rate. However, please note that if the case is lost you could be ordered to pay the costs of the other side. If you have any registered assets (such as a house) then these could be sold to pay the costs. We are extremely careful with the cases we take on and have not yet been in the position of losing with the Client having to pay the other side's costs. However, this could occur and you should be aware of the risks. In all litigation matters we proceed cautiously and if we anticipate that there are significant problems with your case then we will advise you of the problems and any dangers as they arise.

### LITIGATION LENDING

Outlays will be incurred in obtaining medical and financial reports on your behalf. We fund the outlays by organising with our Bank to extend our firm's overdraft to fund such outlays and of course this overdraft loan is repayable upon conclusion of your matter.

Should your case be successful we will be entitled to recover an application fee of \$250.00, plus interest at 10% per annum. Such costs are Solicitor/Client costs and are deducted from your claim at the end of the matter. The interest and administrative charges are not recoverable from the Defendant. Costs will not be charged if the claim is not successfully concluded and the client does not receive compensation.

### TRUST ACCOUNT AUTHORITY

A condition of our retainer is we pay all outstanding professional costs and outlays immediately funds are received into our trust account. An authority is **enclosed** which we request you sign and return.

### THE LITIGATION PROCESS

We confirm our preliminary advice that at this stage you have reasonable prospects of success in the matter. As the case develops we shall update you on your prospects.

As the Plaintiff you can discontinue the action at any time before judgment, but if you do discontinue you will become liable for the costs that the other side have incurred up to that date. If, during our preparation of the case, we form the opinion that you should discontinue the claim because your prospects are no longer good, then it is a matter for negotiation with the other side as to the terms on which we discontinue. Although this is a rare event, we will attempt to negotiate a settlement so that you do not become liable for the Defendant's costs if you discontinue. This however is subject to the circumstances in each particular case and cannot be guaranteed.

### SETTLEMENT OFFERS

In relation to any settlement offers, we can only advise you as to the range of damages that you are likely to receive if you went to Court and whether or not the offer is reasonable. We will advise you as to the consequences of any formal offers of settlement. We will advise you of all offers and it is a matter for you as to what our instructions are. It is your decision. We can only advise you what a Court is likely to award and the costs and risks of proceeding to Court.

### LIABILITY AND DAMAGE

In a case such as yours, we must establish two (2) things:

1. Liability for negligence; and
2. Damages

Liability for negligence involves persuading the court the actions or negligence or breach of statutory duty of the other party caused your injuries.

Damages fall into three general categories: General Damages, Economic Loss, and Special Damages.

### General Damages

- (i) pain and suffering; loss of amenities of life; loss of enjoyment of life;
- (ii) physical and/or mental disability which may result from the accident;
- (iii) assistance given to you over and above what would normally be given (by family and friends for things you would normally do but cannot do due to the accident) [not in all cases].

General damages are assessed by reference to Specialists' medical reports. For this reason we need Medico/legal reports. We will make specialist appointments for you and advise you of the date and time. **It is essential you keep these appointments. Specialists charge late cancellation or non-attendance fees of up to the cost of their reports (which can be several hundreds of dollars) which would have to be deducted from your claim if you fail to attend any appointment.**

### Economic Loss

Any loss of income, both past and future, including superannuation. If you have received Social Security payments from the Federal Government then **a part** of such payments may have to be repaid from the claim of economic loss at the conclusion of the claim. The amount to be repaid will depend upon the amount of settlement awarded but will only be a proportion of the award.

Before the matter proceeds to a settlement conference we will be in contact with you to prepare necessary documents (Statement of Loss and Damage and Medical History Statement) to help us articulate your claim. It is extremely important that at this time you express to our clerks how the injury has affected your life, whether you have ongoing pain and suffering, how it affects your quality of life and ability to work. The law requires you to reduce your losses by attempting to work and lead your life as best you can but you should articulate any problems you suffer in respect of leading your life and working. If you have difficulty with work you should be guided by your Doctor as to the work you should do.

### Special Damages

- (i) Amounts to be repaid to Health Insurance Commission, WorkCover and the Commonwealth Rehabilitation Service. These amounts are added to your claim but then have to be deducted from the damages awarded to repay the Government (if any);

- (ii) Out of pocket expenses for pharmaceutical, medical and travelling expenses incurred by you are reimbursed to you;
- (iii) Interest - The Court will award interest from the date of accident to the date that the matter is concluded.

## HOW LONG WILL THE MATTER TAKE

Speaking generally most matters settle during the litigation process, which can take from between six and eighteen months (and unfortunately sometimes longer). We will do everything within our power to achieve an early settlement. The length of time taken can also depend upon whether or not your injuries have stabilised. It is very important that anything we ask of you is provided urgently so not to delay your matter.

## HOW MUCH WILL I RECEIVE

It is impossible for any Lawyer to advise at the beginning of an action how much a claimant will receive. The amount of damages will depend largely upon the opinions of the independent Medical Specialists which will be contained in the Medico Legal Reports. Furthermore, only time will tell how the injury has affected a claimant's life after the injury has stabilised. Only when all reports from Doctors, Accountants and Liability Specialists have been obtained for both the claimant and the defendant can an estimate be provided as to the range of damages that a Court will award. This advice should only be provided by an experienced Barrister. You should be careful not to form an opinion as to your amount of damages based on newspaper articles or what other people might have received. Every case is different.

## WILL MY MATTER GO TO COURT

When Lawyers from both sides have obtained sufficient information to make an informed decision they can then attempt to settle the matter out of Court. Most matters settle without the need for a Court hearing. Once Court proceedings are instituted each Court step is subject to strict Court time limits. Appropriate measures can be taken against defendants who do not comply with time limits.

## HOW YOU CAN HELP US

It is your responsibility to keep us informed of your current address, telephone number and changes to your employment and lifestyle. If you change your address or telephone number and do not tell us then your matter will be delayed as we cannot get in touch with you. We cannot act without your ongoing instructions. We would only use the signed Power of Attorney as a last resort. To help us please:-

1. Inform us immediately you change your address or telephone number.

2. Tell us if at any time you will be unavailable, such as going on holidays.
3. Make sure you understand what we want from you. Please ask us if you are not sure about anything.
4. Deal promptly with any questions we have or correspondence we send to you. Court documents have strict time limit requirements and if these are not complied with the Court can order you to pay costs. These costs are deducted from your claim.
5. Please try to write to us with information where possible and only telephone to make an appointment if you need to see someone. At times we may be unable to return your calls immediately however we will attempt to return your call as soon as possible. We ask for your patience in this regard.

We involve the client with all decisions. We will be in contact with you when so necessary.

## OTHER MATTERS

**Contact By Us:** We only need talk with you 3 or 4 times throughout the claim process. **Do not be concerned if you do not hear from us for a few months.** We will be continuing your claim. We will advise you of any problems or of any requirements that we have. Please telephone if you have any concerns during this time frame.

**Working Hours:** Our office is open from 8.30 am to 5.00 pm weekdays. We have an answering machine for after hours messages. If you are unable to telephone during the day please feel free to leave a message on the machine. Any messages will be conveyed to the appropriate person and dealt with promptly. We can meet after hours if necessary due to work commitments.

**Correspondence:** We ask that you keep all correspondence from our firm together to avoid material being lost. We **enclose a folder for you to keep** for this purposes.

**Surveillance and Discussions With Other People:** It is unwise for clients to discuss details of their claim with anyone. Should anyone contact you, or members of your family, requiring details of your accident please take that person's name and telephone number and direct them to our office. You should not discuss your claim with them. We are the only persons handling your case.

**What you can and/or cannot do:** It is vital that you tell us truthfully about all activities you can and cannot do. We advise that you lead your life as best you can and only do activities with the advice of your Doctor. If you have difficulty doing certain activities then tell us, but

please do not claim you cannot do something if in fact you can, albeit with difficulty. You are still entitled to compensation. Of course it goes without saying that the Courts require absolute truth and honesty at all times and is the basis of our being retained. Likewise you are to be open with your medical doctors and other occupational medical advisers.

### **The stages of your matter and who is the correct person to communicate with:**

As your matter proceeds the control of your file will be administered by various staff members depending on the stage your matter has reached. Kerry Splatt and/or Luke Randell will have overall control and supervision of your matter. The details of other staff at the various stages are as follows:-

#### Stage I

Kerry Splatt and Luke Randell assisted by Brooke - initial interview; taking statement; explaining legal process and client agreement; conferring with Counsel as to prospects:-

#### Stage II

Kerry Splatt and Luke Randell assisted by Bobbie - Complying with all Statutory requirements and Rules of the Court; communicating with Defendant, insurers and Solicitors; communicating with Counsel and all matters general to establishing the legal claim;

#### Stage III

Kerry Splatt and Luke Randell assisted by Bobbie - Complying with all Statutory requirements for WorkCover and Motor Vehicle accidents; preparing Statements of Loss and Damage and Notice of Claim;

#### Stage IV

Kerry Splatt and Luke Randell assisted by Pauline Smith and Pauline Stalley - Litigation and settlement process;

#### Stage V

Kerry Splatt assisted by Karen, Julie and Peter - Post settlement work

The above information details the terms and conditions of the Solicitor-Client Agreement. Please do not hesitate to contact us should you have any questions or concerns about this Information Brochure or your matter in general.

We look forward to acting on your behalf.