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Tom Meagher
Director

ACCOUNTANT'S LETTERS OF ENGAGEMENT

IPA WA State Conference – June 2019

Tom Meagher | Director

Tom has over 30 years' legal and business experience including:

- working for local and major national Law Firms;
- majority owner and executive director of his former mid-tier Law firm;-
- being a National Operations Manager for a financial advisory IT platform provider
- WA Legal Technology Group Manager for a National Law Firm
- qualified as a Microsoft-certified Project Manager;
- owning and managing an IT Consultancy Business; and
- being a Director and In-House Counsel for a Public Company.





Tom is also a regular publisher of articles and is one of Australia’s leading presenters of legal seminars to and for various professional bodies, associations and government authorities on a wide range of business law and professional development-training topics including:

WA Department of Commerce	Institute of Public Accountants	CPA Australia
Chartered Accountants Australia & NZ (CAANZ)	Governance Institute of Australia	Mortgage & Finance Association of Australia (MFAA)
Law Society of WA	National Electrical & Communications Assoc (WA)	City Insolvency Discussion Group
Innovation Centre of WA	Australian Hotels Association (WA)	Forum for Directors of Indigenous Organisations (FDIO)
LegalWise CLE	Small Business Development Corporation	Stirling Business Centre
The Tax Institute	Australian Institute of Conveyancers (WA)	Institute of Certified Bookkeepers
Western Suburbs Business Association	Business Foundations Inc	WA Business Assist
	Real Estate Institute Western Australia (REIWA)	Australian Institute of Business Brokers (AIBB)

Disclaimer



This seminar is not legal advice and must not be relied on as such.



The information presented in this seminar is intended only as a guide, as to the topic and the matters discussed.



If you have a matter which relates to this seminar or you require legal advice, careful review and analysis of your matter's particular facts, information and documents are required before proper legal advice can be given or applied to your matter.

Contents

1. What is a “Letter of Engagement” ?
2. What is a Contract/ Agreement?
3. Methods of Formation of Contract?
4. Using Electronic Communications for Contracting.
5. Common/ recommended Terms and Conditions in a Contract.
6. What a Contemporary Letter of Engagement may include.
7. Sample Client Services Agreement.



What is a “Letter of Engagement?”

An engagement letter* defines the legal relationship between a professional firm and its client.

The letter states the terms and conditions of the engagement, principally addressing the scope of the engagement and the terms of compensation for the firm.

A letter of engagement helps both parties know and understand the expectations they are agreeing to in their contract.

Most engagement letters follow a standard format.



What is a “Letter of Engagement?” *continued...*



A letter of engagement usually covers:

- the work to be done
- who will do it
- how it will be done
- when it is to be done; and
- how much the work will cost.

A common understanding clarifies the responsibilities of the agent and the client and how the work is to be completed and paid for.

This will also help to avoid uncertainty, misunderstandings and can assist in avoiding disputes over fees and the *scope of work*.

The IPA's current suite of Letters of Engagement



Vicki Stylianou, the IPA's Executive General Manager for Advocacy and Technical has recently provided, as a technical resource for members, a new suite of Engagement Letters including:

- ✓ Standard
- ✓ SMSF Audit
- ✓ Simple Tax Return
- ✓ Tax Agent
- ✓ Audit
- ✓ BAS Agent
- ✓ Bookkeeper
- ✓ Preparation of Financial Reports.

The IPA's current suite of Letters of Engagement



- Client/ addressee.
- Purpose.
- Objectives (services with relevant qualifiers).
- Scope (term of engagement).
- Output (timeframe for delivery).
- Relative responsibilities (quality assurance standards, tax records, confidentiality and privacy).
- Involvement of other members in professional practice.
- Fees and billing arrangements (schedule of rates & charges)
- Ownership of documents.
- Lien over documents (accountants “working papers and documents”).
- Confirmation of the Terms in this Letter of Engagement.

What is a Contract?

Offer

(intention to create legal relations)

Acceptance of Offer

Certainty of Terms

Between the parties:

- ✓ *reasonable and objective interpretation;*
- ✓ *variation of contract or counter offer?*

Consideration

(the parties have bargained or paid for their mutual promises).

Privity

(Only the parties to the contract may enforce their contractual promises).

Methods of Contract Formation

When have you entered into a contract?

- A. **Verbal;**
- B. **Written;**
(note: must always be for land transactions)
- C. **By Performance; or**
(note: also estoppel)
- D. **Any combination of the above.**



Using electronic Communications for Contracting

The Electronic Transactions Act 1999 (Cth) ensures that a transaction under a Commonwealth law will not be invalid simply because it was conducted through electronic communication (i.e. email, text message, digitally-signed PDFs etc).

- If a Commonwealth law requires you to:
- give information in writing
- provide a handwritten signature
- produce a document in material form
- record or retain information

the Electronic Transactions Act means you can do these things electronically.

Using electronic Communications for Contracting *continued...*

- The Act applies to all laws of the Commonwealth unless they are specifically exempted by the *Electronic Transactions Regulations 2000*.
- If a law is exempt, you may still have to use paper forms or retain paper-based information. Most exemptions can be found in Schedule 1 of the Regulations
http://www.austlii.edu.au/au/legis/cth/consol_reg/etr2000365/sch1.html
- For Western Australia - [*Electronic Transactions Act 2011*](#)
- Australia is currently considering acceding to the United Nations Convention on the Use of Electronic Communications in International Contracts.

Using electronic Communications for Contracting *continued...*

Electronic contracts vs digital signatures (cf s.127 of *Corporations Act* and 'witnessing' documents).

Terms and conditions on websites can have an embedded link requiring parties to positively confirmed by response-action that they have expressly '***read and accepted***' them (e.g. click>"I agree").

Contract or variations can be accepted by email.

Ensure that any variation or notice given by email is sent with a specific "read receipt".



Terms & Conditions of an Agreement

You should understand *be aware of, and understand the material effects* (and differences!) of the following clauses:

- (a) Insurances;
- (b) Indemnities and Warranties;
- (c) Defects and Liability;
- (d) Limitations of liability – direct and consequential losses;
- (e) Default and termination (tip: watch for ‘termination for convenience’ clauses);
- (f) Retention of title and the *Personal Property Security Act*
- (g) Liquidated damages;
- (h) Retention sums;
- (i) Notices; and
- (j) Incorporation of other documents into the contract e.g. annexures, schedules, policies.

Terms & Conditions of an Agreement continued...

- You should also ensure the following clauses are acceptable and/or incorporated:
 - Satisfactory payment terms;
 - Security for payment;
 - Ability (or first right) to rectify any defects in the services;
 - Ownership of Intellectual Property Rights;
 - Variations to the works;
 - Extension of time;
 - Dispute resolution;
 - Protective Covenants (e.g. 'anti-poaching' of staff, clients etc.) and Restraints of Trade;
 - Confidentiality;
 - Assignment, novation, sub-contracting;
 - Force Majeure/ 'Act of God'
 - Jurisdiction/ Governing Laws
 - Entire agreement clause; and
 - Further assurances.

What a Contemporary Letter of Engagement may include

Key Areas:	
Scope	Client's rights and obligations under Taxation Laws
Period of Engagement	Trust Account
Background	Our obligations to comply with the Law
Team	Communication
Fees	Confidentiality
Output of documents/reporting	Standard hourly rate schedule/expenses
Timetable	Fixed fees
Commencement, continuation and termination	Combination fees
Variation	Ownership of documents
Outside 'The Scope of Works'	Storage of personal information/Privacy Policy
Acceptance of Terms	Audit shield
Disclosure and recordkeeping	General/miscellaneous

What a Contemporary Letter of Engagement may include continued...

Other simpler ways of still concisely setting-out matters:

- Who is our Client?
- Our Fees and Disbursements
- Invoicing for fees and disbursements
- Security for fees and disbursements
- How and when we may stop acting for You
- Transfer of your matter
- General
- Our 'Scope of Work' and estimate for your work matter
- Client details and authorised signatory
- Statutory Disclosure
- Privacy Statement

Sample Client Services Agreement

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- Transfer of Your Matter.
- General.
- [Our Scope of Work and Estimate for Your Work Matter.](#)
- Client Details and Authorised Signatory.
- Statutory Disclosure.
- Privacy Statement.





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www.bmlegaladvisors.com.au



Tom Meagher

Director

e: tom@bmlegaladvisors.com.au

w: www.bmlegaladvisors.com.au

p: +61 9 9322 3842

a: Level 2, 11 Ventnor Ave, West Perth WA 6005

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