

Asking a Lawyer for “Just a quick look”

Asking a Lawyer for “just a quick look” at their matter (e.g. say a business sale or off-the-plan contract) is a bit like you going to your doctor, with chest pains, and then instructing your doctor you only want them to take your temperature...

If you make the decision to seek appropriate professional advice, please appreciate most experienced professionals:

- are very competent;
- do have their clients or patients' interest foremost; and
- greatly value their reputation in the wider community.

This is in addition to the duty of care and fiduciary duty they owe you (i.e. the very high professional standards that they must abide by for all their clients).

There is a misconception by many that they will be overcharged if they engage a professional's services. Hence, they may unwittingly seek at the outset to limit the skill and ability of that professional by endeavoring to unilaterally 'set' either the fees and/or scope of work. This is incorrect.

If the client already knew the answer to their query or understood all the relevant issues they would not have made the effort to be referred to, approach or contact that professional. There's also that saying: "You won't know what you don't know".

Accordingly, how can a client (we'll use that term here but it could also apply to “patients”) then realistically expect the professional to properly do their job if the client seeks to fetter, from the outset of their engagement, their professional's skills and abilities with unrealistic (or simply ignorant) expectations.

This doesn't mean the professional should roar-off and do an unauthorised amount of work and/or rack-up inappropriate fees - quite the opposite.

The initial consultation is when the professional often needs much more information than a client realises or understands (but again remember that is why they have gone to see that professional), before the professional can even properly understand particular issues or problems that need to be understood and/or resolved.

It is at this point that a professional may start to provide advice and hence why a client is almost always charged for an initial appointment or consultation (almost no one gets a consultation with a medical specialist without expecting to be, and being, billed for such).

The number of times I have heard people say they "just need a simple Will and therefore why shouldn't I just use a Post Office Will kit" because, of course, everyone intimately knows their



own affairs or wishes but that doesn't always mean that the necessary document is simple or they even understand all the legal nor application aspects of it.

For example, often a person who wanted to have a Will prepared may also be the Appointor of a Family Trust, or want to do something with their Superannuation or Insurance proceeds and they may have a 'blended (i.e. step) family' etc. All of this proper 'estate planning' requires appropriate professional:

- *advice* and not just from an estate planning lawyer but also their accountant, and quite often from their licensed financial/ insurance adviser(s) too; and
- *drafting and preparation* of their Wills (and quite often other related documents such as Enduring Powers of Attorney, Binding Death Agreements for their Super, Deeds of Variation for the Family Trusts, Business Succession Agreements etc.)

I have a saying that using 'Post Office Will kits' is a bit like you trying to do your own brain surgery. Whilst there is no law against it and you can buy a scalpel, Dettol and then download a YouTube video, I'm pretty sure it won't work out as well as you expected...

In considering the above points I further note the fact that all professionals are strictly accountable to their respective governing and licensing authorities, being regulatory Practice Boards (for doctors and lawyers) and Institutes (for accountants and engineers etc).

What Can, and Usually Does, Happen with “Just a Quick Look”

The corollary to the "just a quick look" scenario is that, if the professional does just that, leaving aside the fact that they most likely would be negligent by their own profession's (and insurers!) standards, the result for the client is highly likely to be deficient or incomplete advice and or documentation.

Expanding upon that, the client will most probably have materially relied on that "quick look" advice (remember they sought the professional's advice in the first place) but of course if, coming from the "quick look" advice scenario, then:

- they might not have understood all their rights and opportunities, (even ones that could be reasonably added-in or varied);
- they may not have been made aware of the risks or obligations (whether apparent or 'hidden');
- something adversely material was missed or included;
- the client incorrectly relied on that advice and something went badly wrong; or
- someone was harmed and/or they themselves were sued,

and then it's all 'gone to Hell in a hand basket'!



No one will be happy and it is likely lots of unnecessary stress, delays and costs will be incurred by all involved, including but not limited to the professional most likely being sued. What an entirely avoidable mess.

Proper Advice is an Investment

There is a curious societal misperception to all of this, which I find best explained by a simple anecdote:

Most people are willingly to accept and pay for building and home contents' insurance over their entire adult lifetime. However, the statistical likelihood of that unfortunate event actually happening to you is something like 0.08%, and don't get me started on buying Lotto tickets!

Yet some people don't see that getting appropriate, timely professional advice can actually be an 'investment' rather than a "distress purchase". Just like paying an insurance premium, as opposed to not being able afford an uninsured claim when something goes wrong.

However, if say, you undertake a new business enterprise or enter into a contract that you have not properly read and/or understood (but signed!) the chances that something may go wrong or something may happen to you that you didn't (then) appreciate are significantly higher...

This is in addition to the benefit of having professional advice, which can greatly assist you in making a fully 'informed decision' and to better understand all the legal and commercial aspects of your particular matter.

The Best Professionals

You'll quite often find the best professionals are the hardest ones to get to see and quite often the most expensive. But, rather than being begrudging of this, clients should be respectful and appreciative of that because they are very good at what they do.

Paradoxically, on the issue of a professional's hourly rates (in this instance I'm specifically referring to lawyers) this is another source of contention and confusion with some clients.

The hourly rate charged should reflect the professional's efficacy, not just their skill and experience i.e. what a 10 years+ experienced professional can resolve in, say, just 1 hour may take a junior professional many times more and they may not even then have all the requisite experiential insights that only an experienced legal practitioner has. That's not to say that a junior professional can't be appropriately utilised on a cost-effective basis when working in part of a well-organised professional services' team.

Further, as stated earlier, a lawyer has a duty of care to act and advise a client accordingly and, might I add, to their own high professional and statutorily-imposed standards. Consequently, it does not matter whether the 'value' of a client's matter is for a \$50,000 'small' business transaction, \$500,000 contract matter, \$20 million 'englobo' land acquisition



or \$100 million equity sale. The level of skill and diligence is still most commonly only charged at an hourly rate and cannot be based a percentage value of the transaction.

Again, by way of comparison, a surgeon does not treat a young, start-up business owner patient with any less care and diligence than an older, high-earning patient with the same type of medical problem.

How often have you been prepared to accept that you have to wait to see a medical specialist that you were referred to by your regular doctor? I'd be pretty confident you don't seek to haggle on the price with them or tell them what level of skill you want them to apply in addressing your medical problem.

After all you just want the job to be properly done by a competent professional, don't you?

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