



LAWCOVER'S RISK MANAGEMENT



Legal Practice Checks

If you have any queries or concerns, please contact Lawcover on (02) 9264 8855
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For more information, please visit our website at lawcover.com.au



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Practice Health Check

Use Lawcover's Risk Management Practice Health Check to evaluate your practice's existing procedures.

This check is intended to highlight common risk management issues and areas, and help you identify and analyse potential problems within your law practice that require remedial attention. It is intended to be used as guide only, for you to self-assess whether you are maintaining a healthy practice.

New Matters

Client Identification Check

- Do you always identify your new clients?
- Do you file your identification documents or scan them for permanent retention?
- The Lawcover Client Identification Check is recommended

Conflict of Interest Check

- Is there a procedure in place for identifying conflicts of interest?
- Is there a procedure in place for when a conflict of interest is identified or arises during the course of a matter?
- Are conflict checks conducted before confirming instructions to the client?
- The Lawcover Conflict of Interest Check is recommended

Retainer

- Does the law practice have a policy in place which determines who is authorised to take instructions?
- Do you only accept matters in areas of law in which you have the necessary expertise?
- Is there a procedure in place to establish your client's capacity if that capacity is in doubt?
- Do you use an appropriately qualified interpreter if your client finds it difficult to understand English?
- Do you set aside sufficient time for the initial client interview?
- Do you consider the achievability of your client's expectations?
- Does your law practice always comply with the Legal Profession Uniform Law (NSW) with respect to Costs Disclosure and Costs Agreements?
- Does your Costs Agreement clearly and fully set out the agreed scope of work including what work is specifically excluded?
- Does your Costs Agreement specify how and when your client will pay your fees?
- Is your client's acceptance of the Costs Agreement in writing?

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Client Communication

- Are your client's instructions documented clearly and accurately?
- Do you confirm your instructions in writing?
- Does your written confirmation contain the following:
 - Client deadlines?
 - Applicable time limits, limitation periods and the consequences if the limits are missed?
 - A summary description of the scope of the work?
 - An estimated time frame for completion of the work?
 - The client's responsibilities?
- Do you keep your client informed at regular intervals?
- Do you copy to the client all significant documentation?
- Do you confirm in writing variations of the retainer?
- Do you return client calls in a timely manner?
- Do you respond to client correspondence and emails in a timely manner?
- Do you document all client communication?
- Does your staff document all client communication?

File Management

Diaries

- Does the law practice have a diary system incorporating details of all:
 - Conferences and meetings?
 - Court dates?
 - Settlements?
 - Exchanges?
 - Limitation periods?
 - Other deadlines?
- Do all relevant staff have access to the diary system, particularly if a staff member is absent?

Review systems

- Are all open files systematically reviewed at appropriate intervals by the person with carriage of the file?

Records management

- Are your files structured, orderly and up-to-date?
- Do you put copies of emails on the file?

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File Management

Supervision

- Is incoming and outgoing mail and emails to staff monitored by a supervisor?
- Do you take the time to explain and check that your delegated instructions are understood?
- Do you hold regular meetings with your staff and keep a record of the issues discussed?
- Do you delegate work to staff with reference to workload and capability?
- Do you regularly review files conducted by your staff?

Checking Documents

- Are all draft documents checked by the author?
- Are draft documents also checked by another solicitor where possible?
- Does the law practice use software incorporating version control, document compare and track changes?

Closing the Matter

- Is there a procedure in place for closing files?
- When closing the matter do you:
 - Inform your client in writing that the matter is completed?
 - Clearly indicate to your client that your law practice will not be undertaking a future action (eg: exercise of an option)?
 - Render a trust account statement?
 - Inform your client of the client's rights to dispute your costs?
 - Advise on outstanding issues?
 - Advise on any limitation issues?
- Does your law practice take a paginated copy of the file if it is transferred to another solicitor or is taken by the client?
- The Lawcover File Closing Check is recommended

People Management

- Do all employees have employment agreements?
- Do all employees have job descriptions?
- Does your law practice have a formal written induction procedure for new employees?
- Does your law practice have a formal policy on training for its employees?
- Does your law practice formally review the performance of its employees?
- Does your law practice have regular staff meetings?
- Does your law practice have a written grievance procedure for its employees?
- Does your law practice have written policies and procedures/office manual?

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File Notes

- File notes are made by all staff following:
 - Conferences and meetings (client and others) both in and out of the law practice office
 - Telephone calls (including leaving a message)
 - Court appearances
- All file notes include the following details:
 - Full date (including year)
 - Time start and time finish
 - Parties present
 - Authority of parties (power of attorney/director/spouse)
 - Type of attendance
 - Place of attendance
 - Information received
 - Questions asked and responses
 - Advice given
- All file notes are:
 - Contemporaneous
 - Legible (typed wherever possible)
 - Comprehensive
- Does your law practice have its own standard file note template?

Complaints and Claims

- Do you have a documented client complaint or claim procedure?
- Is there one person responsible within your law practice for the management of client's complaints and claims?
- Does your law practice carry out an analysis of complaints, claims or "near misses" to identify the direct and underlying causes?

Financial Management

- Does your law practice have a standard costs basis for each area of law?
- Does your law practice have an annual budget (income and expenses)?
- Does your law practice review its financial performance on at least a monthly basis?

Cyber Risk Management

Software and virus protection

- Do you have a process in place to ensure that new software patches are applied to your operating system and software?
- Do you have antivirus protection in place and is it kept up to date?

Data storage and back-ups

- Do you complete daily data back-ups?
- Do you check at least monthly that your back-ups are readily accessible and able to be used / not corrupted upon retrieval?
- Do you know where back-ups are stored?
- Where data is backed up in the cloud, do you know what authentication procedures are required by the cloud provider to ensure that unauthorised users are not able to access the practice's data?

Payment processes

- Before accepting and acting upon a client's directions for payment that are provided by email, does your firm also verify by phone call and using the phone number recorded at the time initial instructions were taken, **not** a phone number included in the same email as the directions for payment?
- Do you inform your clients in writing that you will never send them an email changing your trust account details or asking for money to be sent to an account other than your trust account for property transactions or other major payments?
- Do you advise your clients in writing to contact your firm urgently if they receive an email from the firm purporting to change the payment details?
- Have all staff members been advised to telephone to check payment directions received from other solicitors, when these are received by email?
 - And have they been advised to telephone to check payment directions received from other solicitors, when these are received by email?

Staff risk-awareness and training

- Have you incorporated cyber risk awareness in your staff policies and training?
- Does your practice have a BYO device security policy for staff members who are able to access work files on non-company devices such as smart phones, tablets or home computers?
- Have you advised all your staff members in writing of the importance of using passwords that are unique to the workplace only?
- Do you and your staff automatically regularly change your passwords every few weeks?
- Have you discussed with staff the risks associated with clicking on attachments or hyperlinks in emails that look unusual or suspicious, and which could contain viruses, ransomware or other malware?
 - Does the law practice also issue reminders and run compliance checks?
- Have you discussed with staff the risks associated with using free or unsecured WiFi, importing material onto the law practice's computer network through a USB drive, and taking confidential material outside the workplace via USB, mobile phone or laptop?
 - Is this included in your induction material for new employees?
 - Are regular reminders given?
- Are you and your staff aware of the risks of sending confidential information by unencrypted email or text message?
 - Are reminders regularly issued?

Data security breaches and privacy protection

- Have you considered whether the Mandatory Breach Reporting regime under the *Privacy Act 1988* (Cth) will apply to your law practice?
- Have you amended your policies and procedures to note the importance of reporting relevant data breaches?

Planning ahead

- Do you have an emergency response plan for what to do in the event of a cyber-attack?
- Does plan includes seeking crisis assistance with assistance contact details recorded for immediate response?

Client Identification Check - Individual

Lawcover recommends that practitioners use the Verification of Identity Standard as set out in the NSW Participation Rules for Electronic Conveyancing to confirm the identity of all new clients regardless of the type of matter. The Rules require production of original documents in any one of the categories in the following table.

NSW Participation Rules for Electronic Conveyancing (Version 3) Schedule 8 Table

Category	Minimum Document Requirements
For Persons, who are Australian citizens or residents:	
1	Australian Passport or foreign passport <u>plus</u> Australian drivers licence or Photo Card <u>plus</u> change of name or marriage certificate if necessary
2	Australian Passport or foreign passport <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
3	Australian drivers licence or Photo Card <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
4	(a) Australian Passport or foreign passport <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary (b) Australian Passport or foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary
5	(a) Identifier Declaration <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary (b) Identifier Declaration by a Person specified in Verification of Identity Standard paragraph 4.4(e) <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary <i>Note: Refer to Verification of Identity Standard paragraph 4.</i>
For Persons who are not Australian citizens or residents:	
6	(a) Foreign passport <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary (b) Foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary

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When confirming the identity of the client, the solicitor should:

- Conduct the check face-to-face and sight original documents to verify identity
- Verify the client's identity from an original primary photographic identification document
- Ensure that copies of documents are properly certified under the Oaths Act 1900
- In conveyancing matters, confirm Australian residency/citizenship of both vendor and purchaser

In verifying the information from the relevant documents the solicitor should be reasonably satisfied that:

- The documents are legible and do not appear to have been altered in any way
- There is no apparent discrepancy between the information collected from the client and information contained in the documents other than a discrepancy that can be reasonably explained and supported
- That the photograph contained in the document is a true likeness of the client

Client Identification Check – Organisation

Corporation

If the client is a corporation the solicitor should:

- Obtain a full ASIC search of the corporation
- Sight and take copies of relevant resolution(s) appointing the solicitor to act on behalf the corporation in the matter. The resolution(s) should adequately describe the matter
- Sight and take a copy of the relevant authority by the corporation for the director/employee to instruct the solicitor
- Complete the proofs of identity for an individual in respect of the director/employee instructing the solicitor

Trust

If the client is a trust the solicitor should:

- Obtain the original or a certified copy of the trust deed and any amendments to the trust deed
- Ensure that the trust deed contains the power(s) required by the matter
- If the trustee is an individual complete the proofs of identity for individual in respect of that trustee
- If the trustee is a corporation complete the proofs of identity for a corporation in respect of that trustee
- Sight and take a copy of the relevant resolution(s) appointing the solicitor to act on behalf the trust in the matter. The resolution(s) should adequately describe the matter
- Sight and take a copy of the relevant authority by the trust for the trustee to instruct the solicitor

Note:

1. If the client is represented by an attorney pursuant to a power of attorney the original or a certified copy of the power of attorney must also be sighted in addition to the above proofs of identity of the attorney.
2. If the client is exercising a power under a court order (eg: an executor or mortgagee in possession) the original or a certified copy of the court order must also be sighted.
3. Copies of all documents must be permanently kept by the solicitor in hard copy or preferably electronic form and not kept in the client file which may be destroyed after 7 years.

Conflict of Interest Check

The information below should be the basis of a conflict of interest search in the database of the computer system of the law practice. It should also be circulated to all solicitors and support staff in the law practice **before opening a new file.**

The Australian Solicitors' Conduct Rules identify the following potential conflicts of interests:

- > Conflicts concerning a solicitors duty to the court and the administration of justice (Rule 3)
- > Conflicts concerning former clients (Rule 10)
- > Conflicts concerning current clients (Rule 11)
- > Conflicts concerning a solicitor's own interests (Rule 12)

The following information has been obtained from the potential client:

If client an individual

Full name

Other names

Full name of spouse

Other names of spouse

Full address

Marital status

If client a corporation

Full name of all directors

Full name of all shareholders

If client a trust

Full name of trustee

Full name of all beneficiaries

If litigation matter

Full name(s) of other party or parties

Full name(s) of potential witness(es)

If property matter

Full address of property

Full name(s) of other party or parties

If criminal matter:

Full name(s) of victim(s)

Full name(s) of potential witness(es)

Client/Matter Instruction Check

Person taking instructions	
Date instructed	Time instructed

Client 1 details (individual)

Client 2 details (individual)

Surname	Surname
Given names	Given names
Title	Title

Client details (company)

Full name of company	
Trading name	
Directors	
Shareholders	
ABN	ACN
GST registration?	

Contact details

Main address		
Suburb	State	Postcode
Postal address (if different from main address)		
Suburb	State	Postcode
Phone (h)	Phone (w)	
Phone (mob)	Fax	
Email		
Website		

Please tick (✓)

Engagement

Yes No

Identity check (individual)	<input type="checkbox"/>	<input type="checkbox"/>
Identity check (company)	<input type="checkbox"/>	<input type="checkbox"/>
Identity check (trustee)	<input type="checkbox"/>	<input type="checkbox"/>
<i>Refer to Lawcover's Risk Management Client Identification Check</i>		
Is the client an attorney?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Obtain a copy of the document to ensure that the attorney is acting in accordance with the terms of the document</i>		
Conflict of interest check	<input type="checkbox"/>	<input type="checkbox"/>
<i>Refer to Lawcover's Risk Management Conflict of Interest Check</i>		
Solvency check	<input type="checkbox"/>	<input type="checkbox"/>
<i>Is the client sufficiently solvent to fund the matter?</i>		
Previous solicitor history check	<input type="checkbox"/>	<input type="checkbox"/>
<i>Is the client "solicitor shopping"?</i>		
Area of law	<input type="checkbox"/>	<input type="checkbox"/>
<i>Do you have the expertise, resources and/or time to properly handle the matter?</i>		
Limitation/critical date	<input type="checkbox"/>	<input type="checkbox"/>
<i>Is there an imminent limitation or critical date?</i>		
<i>Refer to Lawcover's Schedule of Limitations</i>		

Costs

Disclosure/agreement	<input type="checkbox"/>	<input type="checkbox"/>
Is this a matter where a cost disclosure/agreement is required?	<input type="checkbox"/>	<input type="checkbox"/>
Agreed billing method (eg: monthly)	<input type="checkbox"/>	<input type="checkbox"/>
Payment required (eg: 14 days)	<input type="checkbox"/>	<input type="checkbox"/>
Money on account?	<input type="checkbox"/>	<input type="checkbox"/>

File Closing Check

All files must be closed as soon as possible after the work has been completed.

A file cannot be closed until all tax invoices have been paid in full, all incurred disbursements paid and the trust account ledger has a nil balance.

Matter procedures	Please tick (✓)	
	Yes	N/A
Have initial instructions been satisfactorily completed?	<input type="checkbox"/>	<input type="checkbox"/>
Has any failure/refusal of client to act on advice been fully documented?	<input type="checkbox"/>	<input type="checkbox"/>
Has any failure of client to instruct been fully documented?	<input type="checkbox"/>	<input type="checkbox"/>
Have any instructions contrary to advice been fully documented?	<input type="checkbox"/>	<input type="checkbox"/>
Notify client in writing that file closed & retainer terminated	<input type="checkbox"/>	<input type="checkbox"/>
Notify court that no longer acting – appropriate form filed	<input type="checkbox"/>	<input type="checkbox"/>
Notify other party in writing that no longer acting	<input type="checkbox"/>	<input type="checkbox"/>
Client advised in writing of all relevant time limits	<input type="checkbox"/>	<input type="checkbox"/>
Client complaints & compliments referred to partner and/or response	<input type="checkbox"/>	<input type="checkbox"/>
Professional liability situations reported to partner and/or Lawcover	<input type="checkbox"/>	<input type="checkbox"/>
Complete copy of paginated file if sent to another solicitor or unhappy client	<input type="checkbox"/>	<input type="checkbox"/>

Administration procedures	Please tick (✓)	
	Yes	N/A
Update database with changes to client details	<input type="checkbox"/>	<input type="checkbox"/>
Remove original documents such as folio identifiers, wills etc. from file & place in safe custody or send to client	<input type="checkbox"/>	<input type="checkbox"/>
Remove paperclips, bulldog clips etc. from file	<input type="checkbox"/>	<input type="checkbox"/>
Compliance with file destruction policy & timetable	<input type="checkbox"/>	<input type="checkbox"/>

Accounting procedures

Please tick (✓)

Yes N/A

Trust statement sent to client

Third-party invoices paid

The following balances are nil:

> Trust

> WIP

> Incurred disbursements

> Anticipated disbursements

> Debtor balance



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