



LAWCOVER'S  
RISK MANAGEMENT

# Legal Practice Checks

If you have any queries or concerns, please contact Lawcover on (02) 9264 8855 or by email at [practicesupportservices@lawcover.com.au](mailto:practicesupportservices@lawcover.com.au)

For more information, please visit our website at [lawcover.com.au](http://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

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#### 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?
- Do you explain the likely costs and disbursements to your client?
- Does your law practice always comply with the legislative requirements with respect to costs disclosure and costs agreements?
- Does your retainer 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?

## Client Communication

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- Are your client's instructions documented clearly and accurately?
- Do you confirm your instructions in writing?
- Do you confirm your advice 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 and your staff document all client communication?
- If clients communicate via text message or social media chat services do you capture all of those communications for your file?

## File Management

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### 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, text messages and social media chat on the file?

*continued overleaf...*

## File Management

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### Supervision

- Is incoming and outgoing mail and emails and other communications 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?
  - 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

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- 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?

*continued overleaf...*

## File Notes

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- 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)
  - 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

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- 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

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- 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

### Cyber risk response plan

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- Do you have an emergency response plan for what to do in the event of a cyber-attack?
- Does your plan include seeking crisis assistance with assistance contact details (including the number for the group cyber policy incident response team – 1800 427 322) recorded for easy access?

### Software and virus protection

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- 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

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- 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

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- Before accepting and acting upon directions for payment that are provided by email, does your firm verify account details by phone?
- 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 to contact your firm urgently if they receive an email from the firm purporting to change the payment details?



## Staff risk-awareness and training

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- 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?
- Do you regularly discuss 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?
- Do you regularly discuss 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?
- Are your cyber security policies included in your induction material for new employees?

## Data security breaches and privacy protection

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- 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?

## Client Identification Check - Individual

Lawcover recommends that practitioners use the Verification of Identity Standard as set out in the Model 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.

### Model Participation Rules for Electronic Conveyancing (Version 7) Schedule 8 Table

Category	Minimum Document Requirements
	<b>For Persons, who are Australian citizens or residents:</b>
1	Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <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>
	<b>For Persons who are not Australian citizens or residents:</b>
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

### 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 citizenship of both vendor and purchaser, and for non-Australian citizens consider Foreign Investment Review Board and Surcharge Purchaser Duty and land tax implications

### 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.*



## 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

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Full name(s) of potential witness(es)

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**If property matter**

Full address of property

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Full name(s) of other party or parties

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**If criminal matter:**

Full name(s) of victim(s)

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Full name(s) of potential witness(es)

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## Client/Matter Instruction Check

Person taking instructions

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Date instructed

Time instructed

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### Client 1 details (individual)

### Client 2 details (individual)

Surname

---

Surname

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Given names

---

Given names

---

Title

---

Title

---

### Client details (company)

Full name of company

---

Trading name

---

Directors

---

Shareholders

---

ABN

ACN

---

GST registration?

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### 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

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## Engagement

Please tick (✓)

Yes No

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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

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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.

<b>Matter procedures</b>	Please tick (✓)	
	<b>Yes</b>	<b>N/A</b>
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"/>

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



**Accounting procedures**

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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





