



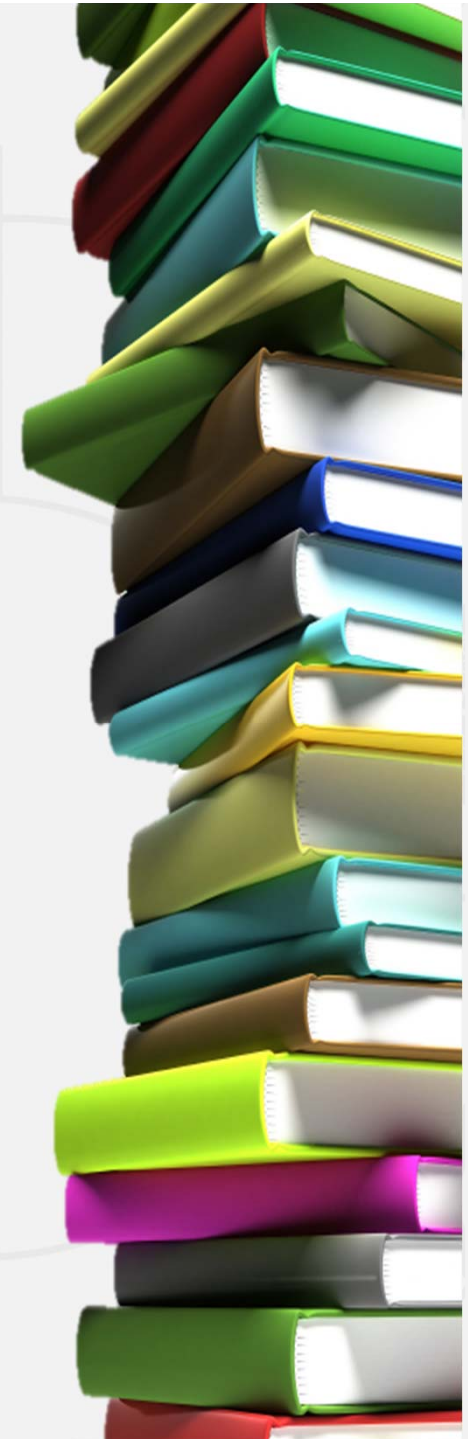
Focusing on information and communication – getting it right in the delivery stage

Presenters:

Deborah Templeman, Principal, Gilchrist Connell
John Rogers, General Manager, Law Mutual (WA)

Format of the Seminar

- Introduction
- Presentation
- Questions
- Feedback



Why are we here?

- To understand the risks arising from inadequate fact finding, legal research and communication
- To consider what practical steps we can take to reduce these risks

Why are we here?

Consequences:

- Financial loss – repayment of fees; loss of billable hours; payment of insurance excess; possible claims loading; payment of claims over \$2m (if no top-up insurance)
- Reputational damage

Likelihood:

High without adequate controls

Why this topic?

- Priority topic based on claims analysis
- Part of Law Mutual's 3 year risk management training plan

3 year training program

- Based on risk management priorities
- Structured towards tangible improvement in claims prevention among firms
- Linked to practical guidance and support
- Where possible tailored to firm size and practice area

3 year training program

Training Area	2018	2019	2020
Risk management	Risks and control during screening phase	Risks and control during providing phase	
Practice management	Supervision and delegation	Managing accountability, responsibility and authority	Strategy and risk appetite
Matter management	Screening matters and clients Scoping work	Client management during delivery Closing out matters	Deadlines + limitation periods
Legal services	Screening – conflicts + client identify Client engagement agreements	Out of practice Accountability, responsibility and authority	Non-litigation risks Managing claims resolution

Matter stages



Matter management requirements

Manage file



Provide further advice on conduct and potential outcomes of matter



Undertake further investigation



Conduct legal research



Draft and lodge documents



Provide advice & representation



Engage experts

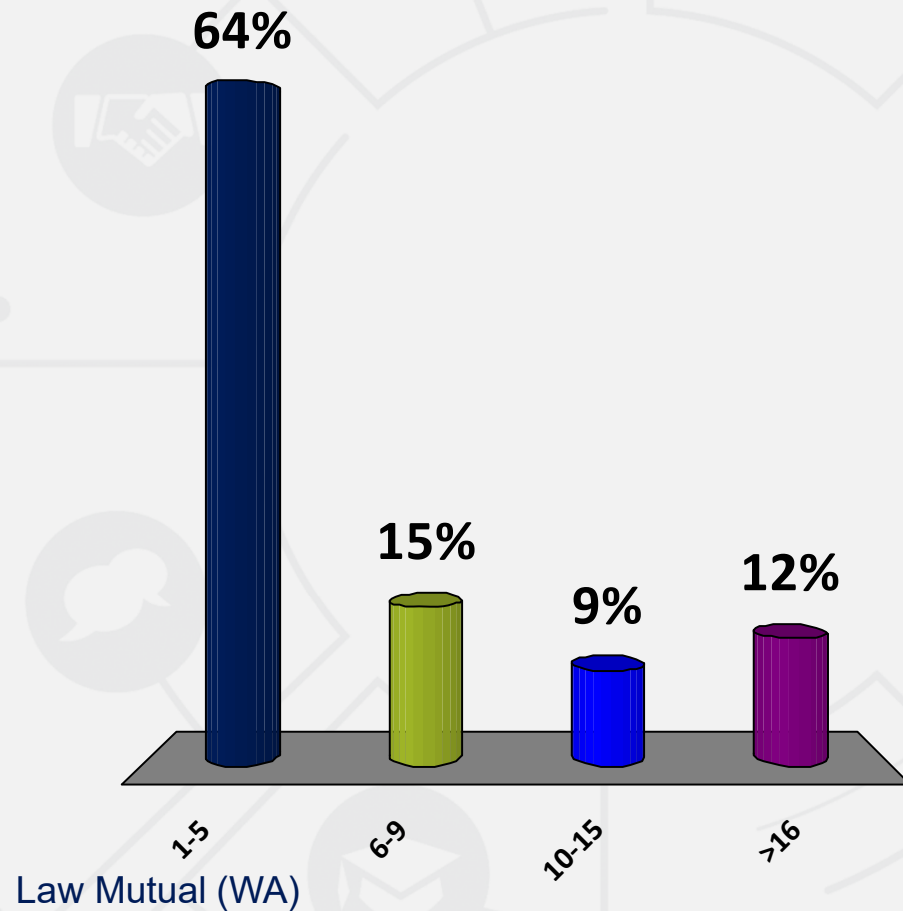


Render bills

Testing the keypad

How many practitioners are in your firm?

- A. 1-5
- B. 6-9
- C. 10-15
- D. >16



Deborah Templeman

- 27 year career focused on insurance, with a strong emphasis on professional indemnity matters.
- Founded Gilchrist Connell's Perth office in 2011 after nearly 20 years at Minter Ellison.
- Grown from 8 to 20 people, with a client list including many leading insurers.
- Law Mutual panel solicitor for six years.
- Lawyers Weekly Insurance Partner of the Year 2017 (Australia).
- Best Lawyers Lawyer of the Year 2020 – Professional Malpractice (Perth)

Who makes mistakes?

[https://www.youtube.com/watch?v=qpPYd](https://www.youtube.com/watch?v=qpPYdMs97eE)

[Ms97eE](https://www.youtube.com/watch?v=qpPYdMs97eE)

Why do people make mistakes?

Cause: Distraction

A. Yes

B. No

Cause: Rushing/time pressure

A. Yes

B. No

Cause: Misunderstanding

A. Yes

B. No

Cause: Confused between 2 similar matters

- A. Yes
- B. No

Cause: Assumption

A. Yes

B. No

Cause: Entry error, autocorrect or autocomplete

- A. Yes
- B. No

Cause: Too polite to question

A. Yes

B. No

Cause: Junior lacks confidence to question

- A. Yes
- B. No

Cause: Language or cultural

A. Yes

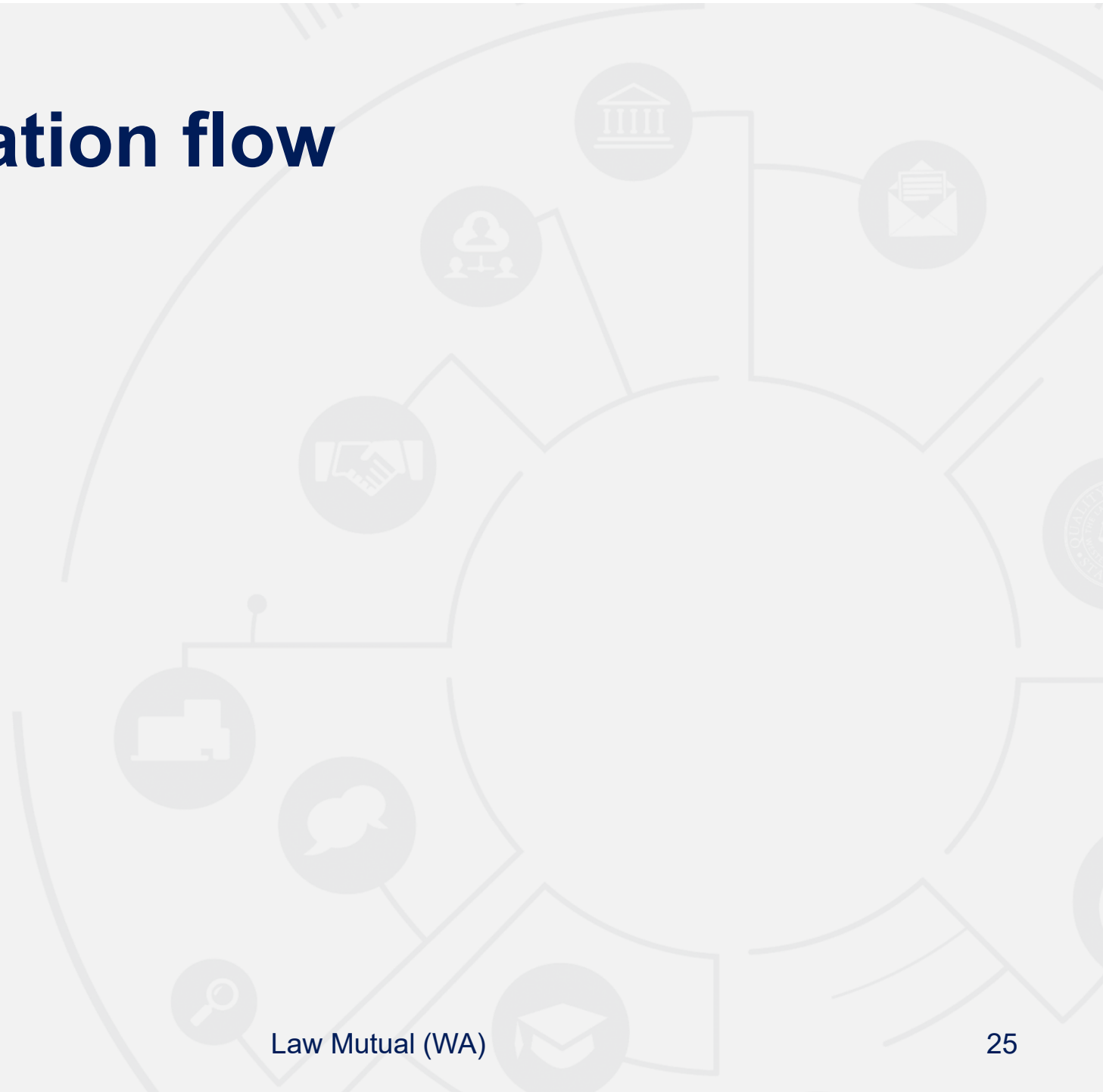
B. No

Causes of information mistakes

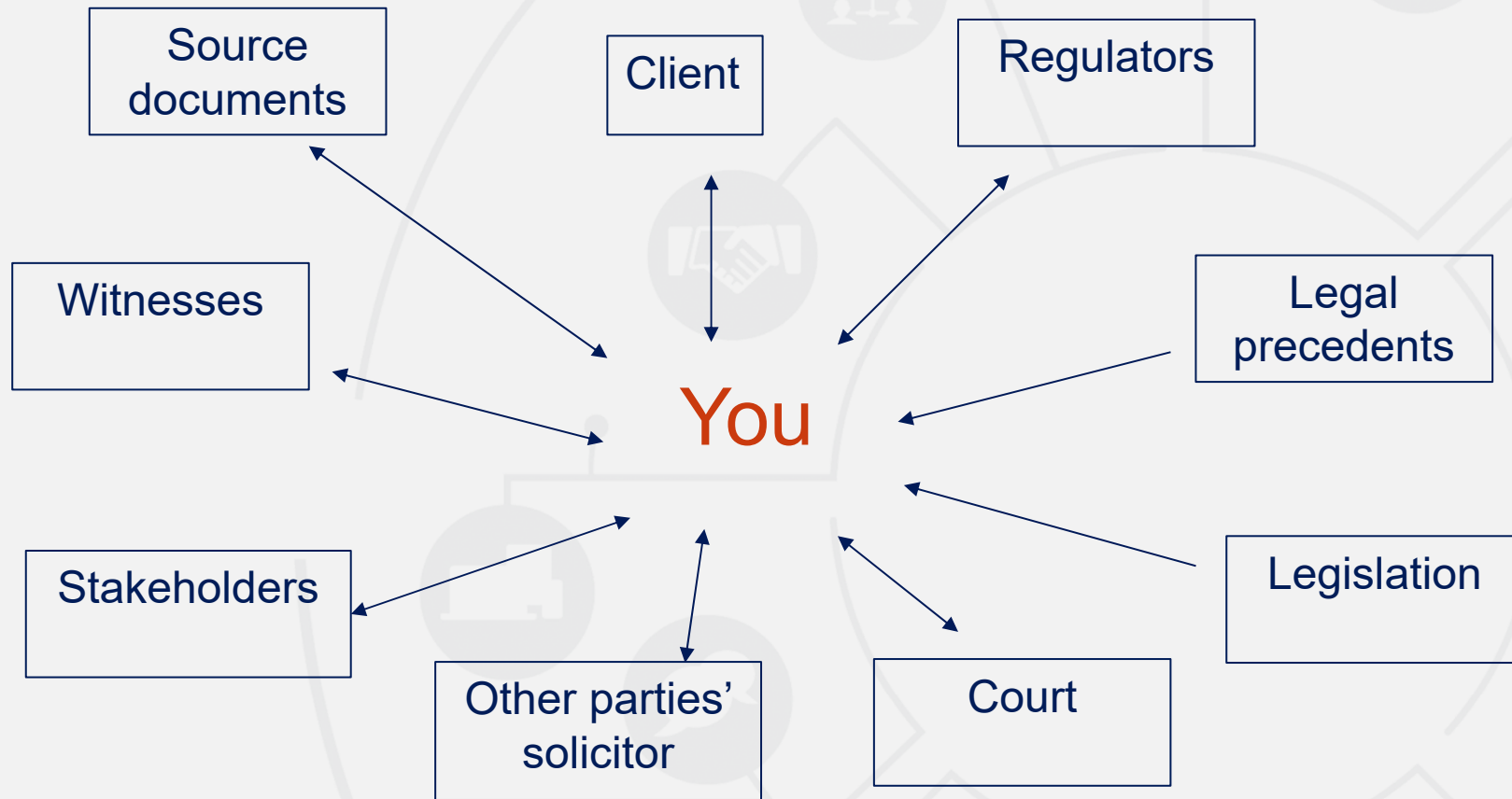
- Distraction
- Rushing/time pressure
- Misunderstanding
- Confused between 2 similar matters
- Assumption
- Entry error, autocorrect or autocomplete
- Too polite to question
- Junior lacks confidence to question
- Language or cultural

How easy is communication?

Information flow



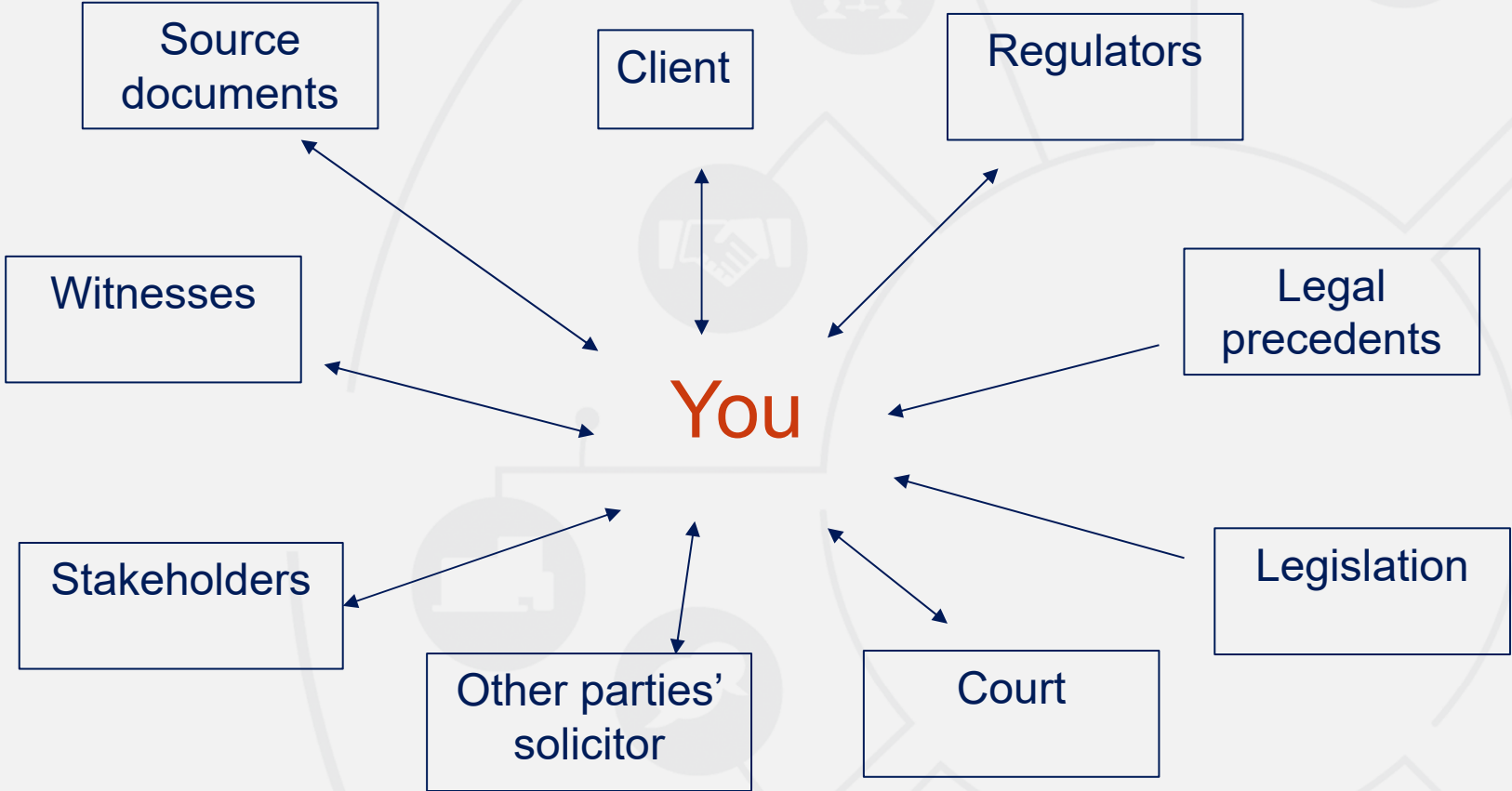
Information flow



Contexts for taking information in

- Witness interviews
- Document review
- Information requests
- Subpoenas
- Legal research
- Reading correspondence
- Conversations
- Appearing in court

Risks of information in



Risks of information in

- Information is received but overlooked
- Significance of information is overlooked
- Mistake about the information (typo)
- False information is accepted
- Correct information is not accepted
- Information not obtained

Real life examples

- Information is received but overlooked

Real life examples

- Significance of information is overlooked

Real life examples

- Mistake about the information (typo)

Real life examples

- False information is accepted

Real life examples

- Correct information is not accepted

Real life examples

- Information not obtained

Controls – information in

Controls – information in (facts)

- Clear file notes
- Searches
- Chronology with questions
- List of issues/sources
- Revisit during information collection (eg advice, discussions, check proof)
- Supervision
- Check with client or client's other advisers
- Artificial intelligence
- Verification from other sources
- Compliance with filing protocols/structures

Cause of legal analysis mistakes

Cause of legal analysis mistakes

- Changes in the law
- Unfamiliar with tools
- Didn't understand the framework
- Didn't see the legal issue in the facts
- Only saw part of the question
- Time pressures/can't bill
- Didn't fully work through the legal analysis

Controls – taking in information about the law

- Supervision (instructions, discussion, check work)
- Commentaries not just cases
- Whole Act
- Peer or expert review/discussion
- Librarian or expert research assistance

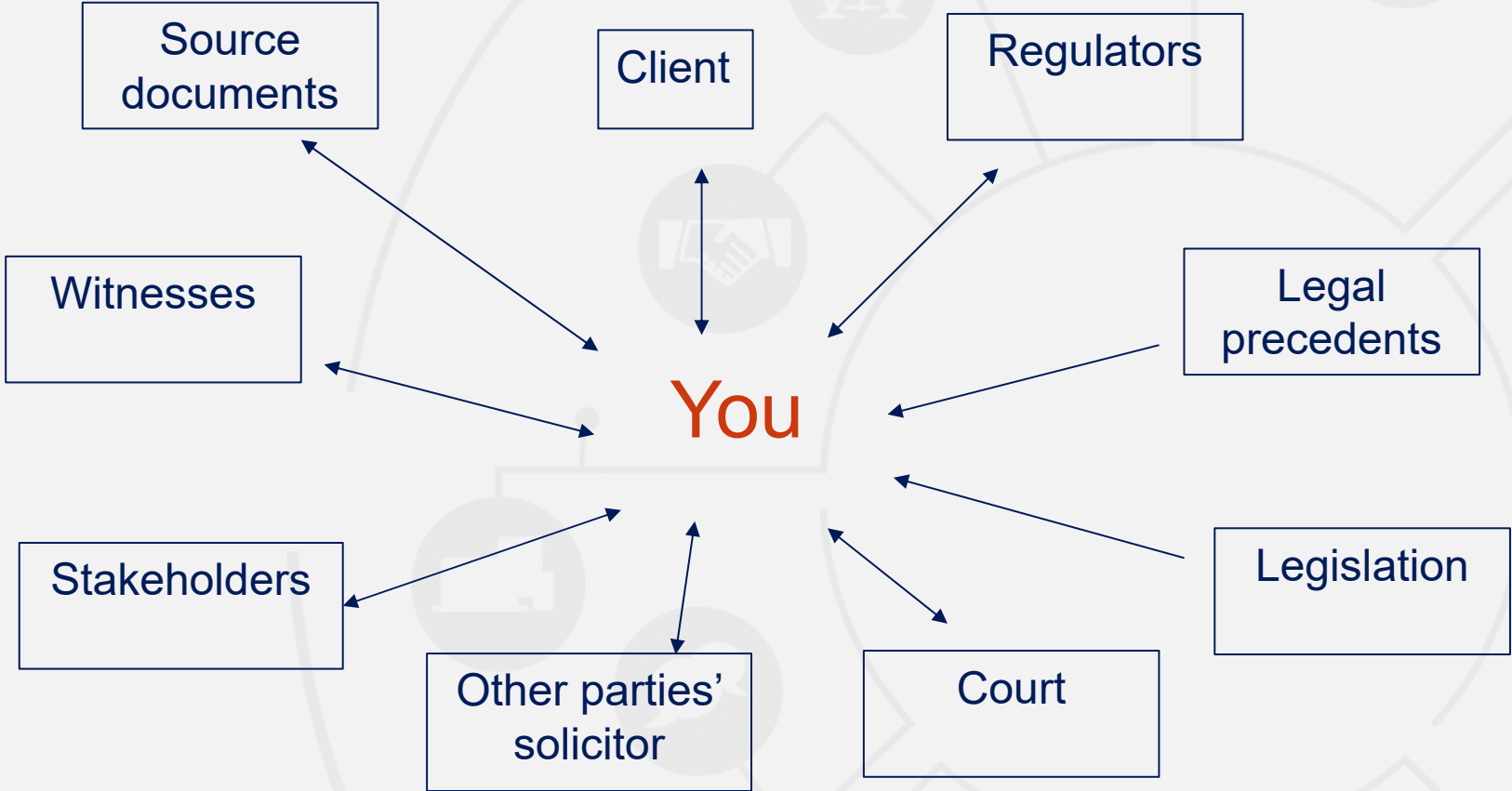
Controls – legal analysis

- Working through a list of issues
- Skeleton draft submissions
- Memorandum or advice
- Flowchart
- Peer review/sense check
 - In writing
 - Brainstorm or talk through

Contexts for giving information out

- Written advices
- Client meetings
- Correspondence
- Conversations
- Appearing in court
- Drafting documents
- Internal memoranda and emails

Risks of information out



Risks of information out

- Incorrect information communicated
- Important information not communicated or not to all necessary recipients
- Inappropriate disclosure
- Issue not addressed
- Communication not effective – misunderstanding

Real life examples

- Incorrect information communicated

Real life examples

- Important information not communicated or not to all necessary recipients

Real life examples

- Inappropriate disclosure

Real life examples

- Issue not addressed

Real life examples

- Communication not effective – misunderstanding

Controls – information out

- Confirm conversations in writing
- Supervision – settling of drafts
- Peer review/second pair of eyes
- Client checking of drafts
- Cross checking against source/advices/chronologies
- Best practice guides and ancillary materials
- Ask – what is missing here?

A recent example

Avwest Aircraft v Clayton Utz

[2019] WASC 306

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