

Quality Practice Standard

Approved 1996
Amended August 2022



The Law Society of Western Australia

Level 4, 160 St Georges Terrace, Perth WA 6000 | **Postal:** PO Box Z5345, Perth WA 6831

Phone: (08) 9324 8600 | **Fax:** (08) 9324 8699 | **Email:** info@lawsocietywa.asn.au | **Website:** lawsocietywa.asn.au

Purpose

This Standard has been approved by The Law Society of Western Australia (Inc).

The Standard is not compulsory, but if a practice undertakes certification it must comply with the Standard in full. It does not cover all the requirements imposed on legal practitioners by law (such as the way trust accounts must be handled) and by the ethical rules of the profession (such as the way conflicts of interest must be handled). Compliance to this Standard requires compliance to all legislation applying to legal practitioners.

However, The Law Society considers that the Standard reflects the highest standards of legal practice and recommends that it be followed by all legal practitioners in Western Australia.

This Standard may be used for certification and to assist legal practitioners to achieve best practice levels in the provision of legal service.

Interpretation

In this Standard the word PRACTICE is used to include:

- a legal practitioner practising on his or her own;
- two or more legal practitioners practising in partnership; and or in an ILP; and
- any part of a government authority or body or any part of a corporation or other business association or enterprise which, provides legal services.

Other definitions are given in section 6. Defined words appear in capitals.

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1. PRACTICE MANUAL

The PRACTICE must have a manual setting out the procedures which address the requirements of this Standard. The manual must be authorised by a senior member of the PRACTICE. The PRACTICE must implement the procedures in the manual. It must be maintained in a current form. The manual must be made available to all staff of the PRACTICE, not just fee earning staff. The PRACTICE must routinely review the manual and all quality assurance arrangements and procedures of the PRACTICE to identify areas for revision or improvement and implement as appropriate.

2. TAKING INSTRUCTIONS

Section 2 of the Standard applies when instructions are first taken or when a new matter begins.

2.1 Appropriate Expertise

The PRACTICE must not accept new instructions or begin a new matter if it does not have the professional capacity, resources and time to deal with it. Only PROFESSIONAL PERSONNEL who have authority to accept instructions may do so.

2.2 Client Identity Checking

At the time entering into an engagement with a new client, the Practice must verify the identity of the client and the authority of the client's representative.

2.3 Conflicts of Interest

The PRACTICE must implement a procedure for identifying a conflict of interest before instructions are accepted or work is commenced. The PRACTICE must consider any emergent conflicts of interest as the matter progresses. If a conflict of interest is identified, the PRACTICE must deal with it in an appropriate way.

2.4 Confirmation of Instructions, COSTS, Timing and Client Expectations

Unless the PRACTICE can demonstrate it is impractical to do so, when instructions are taken or as soon as reasonably possible afterwards, the PRACTICE must write to or otherwise advise the client: (Evidence of the advice must be held on the file)

- (a) confirming the instructions which have been accepted or explaining why the instructions cannot be accepted;
- (b) confirming the scope of the work which is to be done and the services which are to be provided by the PRACTICE;
- (c) how the matter should be handled including the scope of personal information to be collected for the purpose of doing the work or providing the service, how it is likely to be collected, held, used and disclosed and how the personal information may be accessed and corrected;
- (d) any alternative courses of action which could be taken;
- (e) indicating the name and status of the PROFESSIONAL PERSONNEL who will have day-to-day responsibility for handling the matter;
- (f) indicating, (except in the case of a PRACTICE consisting of a single practitioner) the name of the partner (where relevant) and the PROFESSIONAL PERSONNEL responsible for supervising the matter;
- (g) how long the matter is likely to take (having regard to the client's requirements and expectations);
- (h) explaining the basis upon which COSTS will be charged;
- (i) giving an estimate of COSTS and disbursements, explaining their timing and effect and indicating billing intervals and payment arrangements and, where applicable, that consent will be required to apply money in the PRACTICE's general trust account for the client towards the payment of COSTS and disbursements;
- (j) giving advice about the recoverability of COSTS from any other person, or payable to any other person or party (where relevant);
- (k) indicating procedures and relevant COSTS of engaging the services of any person in relation to the matter, such as an independent barrister (where relevant);
- (l) the likely outcome;
- (m) indicating what procedures the PRACTICE has to deal with complaints and also indicating the client's rights to seek redress under the Legal Profession Act;
- (n) Indicating that the client's files and personal information may be subject to a review, where applicable, by a partner or supervising PROFESSIONAL PERSONNEL or trust account auditor or a Quality Practice Standard auditor;
- (o) Indicating that at the conclusion of the matter what DOCUMENTS will be retained by the PRACTICE, who will have access to the DOCUMENTS and security arrangements in relation to the DOCUMENTS.

3. HANDLING A MATTER

Section 3 of the Standard applies during the handling of a matter:

3.1 Activity Recording

The PRACTICE must RECORD and account for all services provided to the client irrespective of whether those services are to be charged for. Time spent or activities undertaken by PROFESSIONAL PERSONNEL in relation to services provided to the client and disbursements incurred for the client and to be paid by the client must be recorded accurately and as soon as reasonably possible after the time is spent, the activity undertaken or disbursements incurred. Detailed RECORDS of activities in relation to services provided to the client must be kept. Where appropriate, file notes must be made.

3.2 File Management and Review

The PRACTICE must implement procedures which, are designed to:

- (a) deal with all matters as quickly as reasonably possible in a manner to ensure the confirmed instructions are dealt with in a timely manner and any inactivity on files to be monitored on a regular basis;
- (b) handle all client's money: without delay; in an efficient manner; in a manner to ensure that it can be traced; according to the client's instructions; and, in the absence of those instructions by payment as soon as reasonably possible into the general trust account for the PRACTICE;
- (c) maintain a list of the matters where the PRACTICE has instructions for a client that includes the client, the matter details and a unique matter reference code;
- (d) mark each file and sub-file clearly with a unique matter reference code and maintain the contents of the file in an appropriate manner and logical sequence;
- (e) keep all DOCUMENTS, letters and other information relating to the matter, including file notes and details of any undertakings given by the PRACTICE, on the file or so that they can be readily traced;
- (f) make sure that the status of a matter and action which has been taken in relation to it can be readily identified and confirmed;
- (g) make sure that all DOCUMENTS, including mail and electronic mail, received by the PRACTICE are viewed, allocated and retained by authorised PROFESSIONAL PERSONNEL;
- (h) make sure that all DOCUMENTS including mail and electronic mail, sent by the PRACTICE and other DOCUMENTS signed by the PRACTICE are signed or authorised to be sent by PROFESSIONAL PERSONNEL;
- (i) where relevant, record the grant of legal aid, including the terms of the grant and any relevant financial limits, on the file;

- (j) nominate PROFESSIONAL PERSONNEL to supervise the handling of every matter;
- (k) provide for periodically reviewing files by the supervising PROFESSIONAL PERSONNEL for compliance with the PRACTICE manual and to ensure the matter is being handled appropriately; and
 - (l) provide advice to clients for selecting and instructing independent barristers, expert witnesses and consultants, including procedures for;
 - (i) the selection of suitable counsel giving consideration to an equitable briefing policy if one is adopted,
 - (ii) advising the client and obtaining the client's agreement in relation to selection; and
 - (iii) consulting with the client in relation to the cost of and payments to be made for obtaining the services of those persons.

3.3 Key Dates

The PRACTICE must make sure that key dates and undertakings (including but not limited to limitation periods or court appointments) are defined and are recorded on file, diarised and monitored. The PRACTICE must ensure that activities related to key dates and undertakings are conducted and recorded.

3.4 Authority Levels

The PRACTICE must give appropriate levels of authority to PROFESSIONAL PERSONNEL such as authority for taking and accepting instructions, handling matters, viewing DOCUMENTS which are received and signing or authorising DOCUMENTS which are sent.

3.5 Practice Review

The PRACTICE must consider reviewing the ongoing performance of the PRACTICE, including workloads, supervision, compliance requirements, results of file review and client communication.

3.6 Progress Reports and Subsequent Instructions

The PRACTICE must give information to the client about progress of the matter and the current level of COSTS incurred in relation to given COSTS estimates, any grant of Legal Aid or changes to the grant and details of transactions using the client's money held on trust with the PRACTICE. This information must be given at agreed intervals or at other times as appropriate and contain any details reasonably required by the client. The PRACTICE must consider if the strategy for the conduct of the matter requires updating as the matter progresses.

If subsequent instructions are taken in relation to a matter which, has already begun, the PRACTICE must comply with the requirements of section 2.

3.7 Variations in handling the Matter or COSTS

The PRACTICE must write to the client about any changes in the way the matter is being handled or in the way COSTS are to be charged. Where possible the PRACTICE must write before the change is made. If not possible, the PRACTICE must write as soon as reasonably possible afterwards.

3.8 Billing

The PRACTICE must send bills at times and manner agreed with the client. Bills should show or refer to details of the work done and, where relevant, disbursements incurred, as reasonably required by the client.

3.9 Changes in PROFESSIONAL PERSONNEL, & Hand Over

The PRACTICE must implement appropriate hand over procedures and inform the client whenever there is a change in the PROFESSIONAL PERSONNEL having ongoing responsibility for handling or supervising a matter. Where possible the PRACTICE must inform the client before the change occurs. If not possible, the PRACTICE must write as soon as reasonably possible afterwards. The PRACTICE must also make sure the change is noted in its own RECORDS.

The PRACTICE must ensure where possible, that when there is a change in the PROFESSIONAL PERSONNEL, sufficiently detailed file notes are provided to the new PROFESSIONAL PERSONNEL having ongoing responsibility for handling or supervising a matter and any key dates are identified.

4. FINISHING A MATTER

Section 4 of the Standard applies when a matter is finished or the retainer terminated.

4.1 Reporting

Where appropriate the PRACTICE must write to the client at the end of a matter, or when the retainer is terminated, about;

- (a) the outcome;
- (b) any further action the client should take, including obtaining further advice;

- (c) any time limits still relevant (such as for appeals or commencing litigation); and
- (d) the file storage and destruction policy of the PRACTICE.
- (e) whether the PRACTICE will forward documents that arrive in the future.

4.2 Accounting for Money and Property

The PRACTICE must account for all money handled on behalf of any person and must return original DOCUMENTS, unused trust money and other property to the person entitled to them (except for items which by agreement with the client the PRACTICE is to keep in safe custody, such as wills).

If the matter is to be transferred out of the PRACTICE, appropriate records are to be retained of costs to date and documents transferred or retained as necessary in accordance with any lien set out in the cost agreement.

4.3 DOCUMENT Storage

The PRACTICE must make sure that items kept in safe custody are adequately secured and readily traced, and that a RECORD of all such items is maintained.

4.4 Matter File Storage

The PRACTICE must make sure each file is stored;

- (a) at least until any relevant limitation period has expired;
- (b) so that it is reasonably protected against loss or damage; and
- (c) so that it can be readily retrieved.

5. OTHER PROCEDURES

5.1 Personnel

The PRACTICE must make sure:

- (a) all new personnel go through an induction process, which includes instruction about this Standard, and the availability of counselling services through the PRACTICE or through the Law Society of Western Australia for members;
- (b) adequate RECORDS are kept of the qualifications, training and experience of all personnel; and

- (c) all personnel are given training sufficient for them to achieve and maintain a level of knowledge and competence that is sufficient to enable them to perform the functions of the position at a reasonably competent level.
- (d) consideration is given to systems training and CPD requirements for personnel returning to the firm after an extended leave of absence.
- (e) all practitioners have the appropriate Australian practising certificate and the designated local regulatory authority and legal insurer is notified of any changes.

5.2 Reference Materials

The PRACTICE must make sure that up to date legal references (including legislation and precedent materials) are readily available for use by PROFESSIONAL PERSONNEL. The references must be relevant to the areas of law governing the PRACTICE and those in which the PRACTICE offers services.

5.3 Procedures for Client Feed-Back and Complaints

The PRACTICE must:-

- (a) have a mechanism in place for recording and analysing client feed-back,
- (b) and have (and must implement) written procedures for receiving complaints by a client in relation to the handling of a matter and recording details of the complaint and what action is taken by the PRACTICE in response to the complaint;
- (c) respond to the complaint promptly;
- (d) write to the client about what action has been taken or will be taken;
- (e) identify the issues raised by the client's complaint and, if appropriate, provide adequate redress to the client;
- (f) if appropriate, take action which will prevent (or minimise the likelihood of) the problem recurring; and
- (g) implement procedures for periodically reviewing the RECORDS created by the procedure that addresses paragraph (a) above for the purpose of implementing action to minimise the likelihood of similar further complaints in the future.

5.4 Technology Policy

The PRACTICE must when it communicates with a client or others by electronic communications, implement a procedure for:

- (a) The use and authorisation or review of e-mails and DOCUMENTS sent with e-mails or delivered in electronic form.

- (b) Printing or storing of e-mails and DOCUMENTS sent with e-mails or delivered in electronic form.
- (c) The use of virus scanning and elimination technology.

6. DEFINITIONS

In this Standard;

COSTS includes professional fees and all additional amounts of money charged to the client (such as disbursement) made by the PRACTICE;

DOCUMENTS include written material which, is recorded or stored electronically or by any other means;

PRACTICE includes:

- a legal practitioner practising on his or her own;
- two or more legal practitioners practising in partnership; and or in an ILP; and
- any part of a government authority or body or any part of a corporation or other business association or enterprise which, provides legal services.

PROFESSIONAL PERSONNEL includes legal practitioners holding a current practising certificate employed by the PRACTICE.

RECORDS include any information or data however it is recorded or stored.