

# All Phases Assistance



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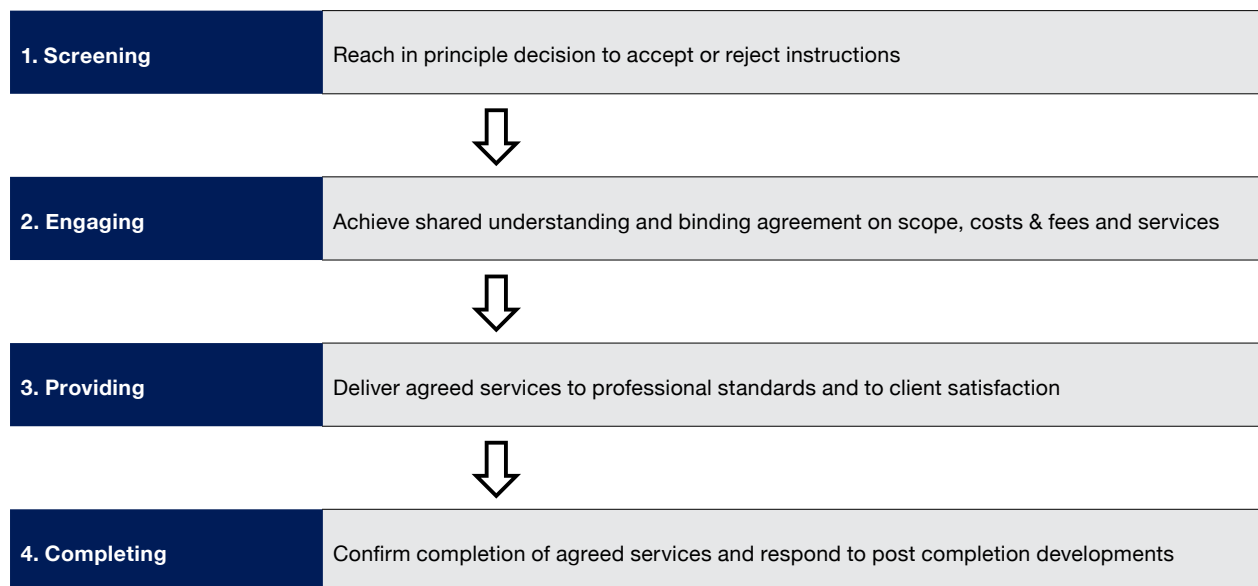
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# This Document

This document assists legal practices to meet the Requirements of Law Mutual's Matter Management Guidelines that apply to the All Phases of a Matter.

There are four key phases in the management of a Matter:



To achieve required outcomes, a legal practice must undertake certain Key Activities.

Law Mutual's Matter Management Guidelines provide the Key Activities for each phase and Key Activities that should be conducted during All Phases.

For each Key Activity this document sets out:

Requirement	the specific action that should be taken
Tasks	detailed activities that must be done to meet the Requirement
Guidance	detailed activities that it is recommended be undertaken to meet the Requirement
Controls	management mechanisms to ensure that the detailed activities are consistently carried out to required standards
What could go wrong	examples of what could go wrong if the detailed activities are not carried out to required standards

There are four different types of Controls. The following table provides comments on each type.

Type	Comments
Knowledge	<p><b>How principals ensure people know and understand the method to meet a Requirement</b></p> <p>People must know and understand the method to meet a Requirement. This might be done via:</p> <ul style="list-style-type: none"> <li>• training or mentoring (suitable where the method is variable and/or nuanced e.g. method for managing client expectations)</li> <li>• documentation and tools (e.g. procedures, checklists or templates – suitable where the method requires completion of specific tasks)</li> <li>• embedded via business rules into IT systems (e.g. IT system does not allow invoicing until conflicts check completed)</li> </ul>
Role clarity	<p><b>How people know what aspects of the method they are accountable or responsible for, and what aspects lie outside their authority</b></p> <p>Where people work together, role clarity ensures that the method is implemented by defining who is accountable for an outcome; this is usually a principal or senior lawyer, who is also accountable for:</p> <ul style="list-style-type: none"> <li>• each task that leads to the outcome; and</li> <li>• limits of authority, i.e. who cannot do certain tasks without approval</li> </ul> <p>Confusion over who is accountable or responsible leads to errors. Key accountabilities and responsibilities should be documented.</p>
Motivation	<p><b>How principals motivate people to follow the method through leadership, culture, performance review and other mechanisms</b></p> <p>Mechanisms to motivate lawyers to implement the method include:</p> <ul style="list-style-type: none"> <li>• demonstrated leadership (i.e. walking the walk)</li> <li>• recognising performance, especially for important tasks that typically go unrecognised e.g. good scoping prior to engagement</li> <li>• aligning performance metrics with the method; i.e. measuring more than billable hours</li> </ul>
Assurance	<p><b>How principals have comfort that the method has been followed</b></p> <p>Principals should ensure relevant checks, reviews and sign off for higher risk activities:</p> <ul style="list-style-type: none"> <li>• an assurance control might be as simple as requiring initials against a checklist on the file.</li> <li>• some Requirements are so critical for protecting the legal practice that principals require assurance they have been met in every Matter e.g. conducting a conflicts check or ID check.</li> </ul>

Controls will vary depending on the size and resources of the legal practice.

In this document:

♥ means a task is considered essential to the effective management of a high risk activity

\*\* means a Toolkit related to that control is available on the Law Mutual website. A toolkit will usually contain:

- further details of Tasks
- templates

# All Phases Activities

Activities undertaken during All Phases of a Matter are as follows:

- Take notes
- Manage files
- Protect information
- Manage client expectations
- Manage changes to Matter conduct
- Manage deadlines and time
- Supervise and review
- Identify and manage new conflicts of interest
- Meet undertakings

# Details of Key Activities

## Take notes

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Take accurate and complete contemporaneous notes concerning instructions received, advice given, information communicated and action taken</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Make mandatory the taking of contemporaneous notes concerning verbal instructions, advice and information communicated</li> <li>Provide clear directions as to how notes are to be stored on the file</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>Provide notepads that prompt the capture of key information – date, Matter, client/attendees, instructions, advice and other communication</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> <a href="#">Contemporaneous Notes Toolkit</a> ❤️ **</li> <li><b>Role Clarity:</b> The senior lawyer is accountable for ensuring the existence and completeness of contemporaneous notes</li> <li><b>Motivation:</b> A senior lawyer should reinforce the requirement for and importance of accurate, complete and immediate notetaking in the conduct of the Matter and to protect the legal practice</li> <li><b>Assurance:</b> <ul style="list-style-type: none"> <li>The senior lawyer should review contemporaneous notes taken by junior lawyers in the supervision of the Matter</li> <li>The Cross checking whether phone calls and meetings noted in time sheets are evidenced by notes on the file</li> </ul> </li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>The client and lawyer have differing recollections as to instructions or advice given verbally</li> <li>There is no evidence of action taken on behalf of the client</li> </ul>

## Manage file

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Retain all information in relation to the Matter in a central location comprising logically ordered and identified documentation</li> <li>Ensure other lawyers can understand status of the Matter if needed</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Provide a mandatory procedure to maintain a 'single source of truth' in relation to a Matter, taking into account:               <ul style="list-style-type: none"> <li>paper and digital versions of documents</li> <li>different digital systems and version control</li> <li>constraints that arise when people work from home and cannot access hard copy documents</li> </ul> </li> <li>Define folder and file naming conventions, access and editing rights</li> <li>Set minimum requirements for handing over day-to-day conduct of a Matter</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>Management of information on the file in a logical and complete manner is essential to ensuring the efficient and effective conduct of the Matter regardless of who has the conduct, and the role senior and junior lawyers play</li> <li>Provide methods to highlight critical or high risk activities and tasks, deadlines and information on the file</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> <ul style="list-style-type: none"> <li>File and information management procedure</li> <li>File management IT system</li> <li>Matter handover checklist</li> </ul> </li> <li><b>Role Clarity:</b> The senior lawyer is accountable and practitioners working on the matter are responsible to ensure integrity of files</li> <li><b>Motivation:</b> Principals should emphasise the importance of handing over files to colleagues in a way that allows them to manage the Matter effectively</li> <li><b>Assurance:</b> <ul style="list-style-type: none"> <li>When supervising conduct of a Matter, the senior lawyer should check the file and its information is managed in accordance with the file and information management procedure</li> <li>Periodically review random files to confirm adherence to file and information management procedure</li> </ul> </li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>The practitioner with day-to-day conduct of a Matter is not available or leaves and the conduct of the Matter is passed to another practitioner, who misses a deadline or other critical information</li> <li>The legal practice no longer has a 'single source of truth' for the Matter i.e. different practitioners work on different versions of documents (paper and digital) resulting in errors and omissions</li> <li>Practitioners cannot efficiently marshal all relevant facts, information and correspondence for a Matter, resulting in errors and/or wasted time</li> </ul>

## Protect information

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Maintain the privacy and security of documentation and confidentiality of client information and communications at all times</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Set clear expectations regarding client confidentiality</li> <li>Provide the minimum technical protections for cyber security</li> <li>Conduct daily back-ups to a secure offsite server</li> <li>Provide regular (minimum annual) cyber security training to all personnel</li> <li>Ensure that client confidentiality and information are protected when people work from home</li> <li>Implement a procedure for secure electronic funds transfers (EFTs)</li> <li>Implement a procedure for information security including minimum requirements regarding:               <ul style="list-style-type: none"> <li>Passwords/two factor verification</li> <li>removeable media</li> <li>public wi-fi</li> <li>system and information access</li> <li>BYOD (Bring Your Own Device) and</li> <li>WFH (Working from Home)</li> </ul> </li> </ul>
Guidance	<ul style="list-style-type: none"> <li>Treat information security as a fundamental component of the legal practice's professional reputation</li> <li>Understand that cyber security is not only a technical issue, to be left to IT experts; people and processes are equally important</li> <li>Allocate a principal to understand cyber security issues, remain abreast of developments and direct the cyber security program</li> <li>Use the Australian Cyber Security Centre's Essential Eight to assess the legal practice's cyber maturity and manage a program to improve it</li> <li>Develop a one-page cyber response plan – whom to contact, what and when to communicate with clients etc.</li> <li>Communicate to clients the steps to be taken by the legal practice and each client to protect clients from cyber-attack e.g., verification of identity prior to transfer of funds</li> </ul>



Area	Description
Controls	<ul style="list-style-type: none"> <li>• <b>Knowledge:</b> <ul style="list-style-type: none"> <li>○ Client confidentiality policy</li> <li>○ Information security procedure</li> <li>○ Cyber security IT controls ♥</li> <li>○ Training on cyber security</li> </ul> </li> <li>• <b>Role Clarity:</b> <ul style="list-style-type: none"> <li>○ Protecting information is the responsibility of all personnel</li> <li>○ A principal should assume overall accountability for the cyber security system</li> </ul> </li> <li>• <b>Motivation:</b> Principals should regularly raise the issue of cyber security to keep it ‘front and centre’</li> <li>• <b>Assurance:</b> Engage a cyber security consultant to run a ‘black hat’ test i.e., send personnel “scam emails” to see who opens them or clicks on links</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>• Cyber-attack</li> <li>• Hard files or documents lost</li> <li>• Lawyers speak out of turn or are overheard discussing clients and Matters</li> <li>• Breach of relevant Solicitor’s Conduct Rules</li> </ul>

## Manage client expectations

Area	Description
Requirement	<ul style="list-style-type: none"> <li>• Ensure ongoing communication to and feedback from the client so that client expectations on performance, cost, timing and outcomes are constantly managed</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>• Define the legal practice's risk appetite with regards to prospective clients who hold unrealistic expectations</li> <li>• Identify a prospective client's expectations on performance, cost, timing and outcomes prior to engagement</li> <li>• Scope the Matter in sufficient detail and capture this scope in the client engagement agreement</li> <li>• Communicate to the client               <ul style="list-style-type: none"> <li>○ any changes in circumstances that alter the lawyer's expectations with regards to cost, timing and/or outcomes</li> <li>○ any change in the legal practice's conduct of the Matter (e.g. who is managing the Matter for the client)</li> </ul> </li> <li>• Ensure junior lawyers escalate any issues or potential issues with the client early</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>• Principals should discuss with other lawyers incidents where they turn down work from prospective clients because the prospect had unrealistic expectations i.e. demonstrate how the legal practice's risk appetite operates</li> <li>• Request money on trust and bill regularly to manage expectations around cost</li> <li>• Consider obtaining a 2nd opinion from counsel to manage client expectation around outcomes</li> <li>• Provide clients with a point of contact within the legal practice, independent of the lawyer(s) managing their Matter</li> <li>• On large Matters, consider breaking the engagement, scope and deliverables into phases, so that expectations can be reset if required</li> </ul>
Controls	<ul style="list-style-type: none"> <li>• <b>Knowledge:</b> <ul style="list-style-type: none"> <li>○ Initial meeting template includes prompts to identify and manage client expectations on outcomes, cost and timing</li> <li>○ Requirements regarding money on trust at engagement followed by regular billing</li> <li>○ Client complaint handling process</li> </ul> </li> <li>• <b>Role Clarity:</b> The senior lawyer has accountability for ensuring effective communication, understanding and client satisfaction. Junior lawyers should promptly escalate any concerns or issues with client relationships</li> <li>• <b>Motivation:</b> The senior lawyer should emphasise and counsel junior lawyers on the importance of and approach to client relationship and expectations management</li> <li>• <b>Assurance:</b> The senior lawyer should monitor client relationships throughout supervision of the matter and complaints must be escalated</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>• The client's expectations on performance, cost, timing and/or outcomes are not met resulting in a cost and/or liability dispute</li> </ul>

## Manage changes in conduct of the Matter

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Promptly notify the client of any material change in the legal practice's conduct of the Matter including scope, lawyer, fees and costs, and obtain the client's agreement to any variation</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Raise any potential changes with the Client and inform client in writing of any material change and impacts</li> <li>Obtain the client's agreement in writing to any variation to the client engagement agreement</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>Changes which impact the cost, timing, strategy or prospects of success in a Matter might be driven by factors external or internal to the Legal Practice</li> <li>Change might be sudden or more gradual and subtle especially if the Matter is conducted over an extensive period. Recognition and communication of a change as early as possible and its impact is therefore essential</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> Template for variation to client engagement agreement</li> <li><b>Role Clarity:</b> A senior lawyer should be accountable for managing any change in the conduct of a Matter</li> <li><b>Motivation:</b> A junior lawyer with conduct of the Matter should be encouraged and mentored on flagging changes during the conduct of the Matter</li> <li><b>Assurance:</b> The senior lawyer should proactively monitor any changes during the conduct the Matter</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>Dispute with client regarding change to lawyers managing Matter, scope, fees or other aspect of the legal practice's conduct of the Matter</li> <li>Significant change impacting scope, conduct or strategy is not understood</li> <li>Breach of relevant Solicitor's Conduct Rules</li> </ul>

## Manage deadlines and time

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Identify, track and ensure deadlines are considered and met during the conduct of a Matter</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Set requirements as to when and how critical dates should be verified</li> <li>Provide clear process, tool and responsibilities regarding how and where deadlines are captured and then brought to the attention of the relevant lawyer</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>Establish mechanism to identify who has entered deadline (e.g., initials next to date)</li> <li>Double diarise i.e., enter deadline and also an earlier date to prompt action by lawyer and/or client to meet that deadline</li> <li>Diarise for review i.e., enter dates to prompt 6 month or 12 month reviews of every file</li> <li>Ensure critical deadlines are captured in more than one individual lawyer's diary</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> <ul style="list-style-type: none"> <li>Integrated practice-wide diary system ♥</li> <li>Time tracking IT system</li> <li>Procedure for entering and managing deadlines including who is responsible for doing so</li> </ul> </li> <li><b>Role Clarity:</b> A junior lawyer should not enter or change a deadline without review</li> <li><b>Motivation:</b> No specific requirement</li> <li><b>Assurance:</b> A senior lawyer should supervise progress on a Matter against upcoming deadlines</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>Failure to verify a date provided by client e.g., date of an accident</li> <li>Failure to input deadline into a diary</li> <li>Deadline is in the diary but there is no earlier prompt to commence the action required to meet the deadline</li> <li>Client is advised as to deadline but not as to when they should commence action required to meet the deadline</li> <li>Deadline in diary of an individual lawyer, who is not at the legal practice when the deadline arrives</li> <li>Deadlines are not transferred to a new IT system</li> <li>Errors made in rush to meet deadline</li> </ul>

## Supervise and review

Area	Description
Requirement	<ul style="list-style-type: none"> <li>• Ensure supervisor regularly meets with and reviews the conduct of lawyers who manage the Matter</li> <li>• Ensure supervisor reviews all written advice and legal documents prepared by junior lawyer</li> <li>• Review other written advice and legal documents that are high-risk due to their contents or the consequences of an error</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>• Define supervisors' accountabilities - who supervises whom, how often, what they consider, availability etc.</li> <li>• Define junior lawyers' responsibilities and limits of authority:               <ul style="list-style-type: none"> <li>◦ manage deadlines to ensure time for supervision and review</li> <li>◦ not give legal advice</li> <li>◦ not issue documents unless reviewed</li> <li>◦ promptly escalate issues including incidents when legal advice is inadvertently given</li> </ul> </li> <li>• Communicate legal practice's approach to review of high-risk work by senior lawyers</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>• If only one senior lawyer has expertise in an area, consider the use of external counsel for review; if this senior lawyer is new to the legal practice, communicate this option to them</li> <li>• Mentor junior lawyers on how to avoid giving legal advice when "put on the spot" by a client question</li> </ul>
Controls	<ul style="list-style-type: none"> <li>• <b>Knowledge:</b> Procedures for:               <ul style="list-style-type: none"> <li>◦ senior lawyer accountabilities</li> <li>◦ requirements for review (see ** <a href="#">Supervision Toolkit</a> for further details)</li> </ul> </li> <li>• <b>Role Clarity:</b> A senior lawyer should be accountable for the conduct of the matter and establish the approach to supervision at the early phase of the Matter</li> <li>• <b>Motivation:</b> Actively develop a culture that empowers juniors to insist work is properly reviewed before being issued and encourages junior lawyers to raise questions and errors promptly</li> <li>• <b>Assurance:</b> Anonymous survey of junior lawyers' views on supervision at the legal practice</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>• Inadequate supervision or review of junior lawyer results in legal error or damage to client relationship</li> <li>• Inadequate review of high risk advice or legal document of senior lawyer results in legal error</li> <li>• Breach of relevant Solicitor's Conduct Rules</li> </ul>

## Identify and manage new conflicts of interest

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Periodically review for changes to conflict of interest position and manage any emerging conflicts</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Educate and prompt client on their ongoing requirement to update the legal practice on any change in circumstances</li> <li>Conduct ongoing questioning and verification of client circumstances</li> <li>Conduct conflicts check when new lawyer joins legal practice</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>Reference the client's ongoing requirement to update the legal practice in the engagement agreement</li> <li>If initial conflicts check includes ASIC check, set up automatic ASIC alerts on changes</li> <li>When supervising, a senior lawyer should consider whether co-clients' have developed potentially conflicting interests and if so, ensure the conflict is properly managed</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> The <a href="#">Conflicts Management Toolkit</a> includes requirements for ongoing checking ❤️ **</li> <li><b>Role Clarity:</b> A senior lawyer is accountable for ensuring ongoing conflict risk is managed throughout the conduct of the Matter</li> <li><b>Motivation:</b> Not typically applied to this Requirement</li> <li><b>Assurance:</b> A senior lawyer should supervise whether junior lawyers regularly question clients about changes to circumstances</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>Post engagement, a new person or relationship gives rise to a conflict of interest that is not identified</li> <li>Co-clients develop potentially conflicting interests which are not properly managed</li> <li>Client does not communicate change in circumstances to the legal practice that give rise to a potential conflict</li> <li>Lawyers do not consider conflicts of interest once the initial conflicts check is completed</li> <li>New lawyer joins legal practice, or legal practice merges with another, giving rise to a conflict of interest that is not identified</li> <li>Breach of relevant Solicitor's Conduct Rules</li> </ul>

## Meet undertakings

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Consistently and appropriately give and comply with any required undertakings</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Identify need to give an undertaking and determine whether by lawyer or client</li> <li>Draft undertaking carefully and be confident that its terms can be met in a timely manner</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>An undertaking is a promise made by a lawyer upon which the recipient is entitled to rely and depending on the circumstances, which binds the lawyer or lawyer's client or both. Undertakings are obligations that lawyers pledge themselves or their clients to honour</li> <li>A lawyer must carefully consider the circumstances in which an undertaken will be given and the implications for the legal practice or the client</li> <li>The lawyer should not give a personal undertaking to do or refrain from doing something where the legal practice relies in whole or in part upon a third party to fulfil the undertaking</li> <li>The lawyer should seek to avoid personal liability attaching to an undertaking made on behalf of a client</li> <li>A senior lawyer should identify any undertakings made, explicitly or implicitly, by a junior lawyer and if the legal practice is able to comply with them</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> Require lawyers read and understand the relevant Solicitor's Conduct Rules</li> <li><b>Role Clarity:</b> A senior lawyer has accountability for undertakings made on behalf of the legal practice</li> <li><b>Motivation:</b> Not typically applied to this Requirement</li> <li><b>Assurance:</b> Not typically applied to this Requirement</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>The lawyer fails to comply with an undertaking in a timely manner or at all</li> <li>Breach of the relevant Solicitor's Conduct Rules</li> </ul>

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