

All Phases Conflict Management Toolkit

Requirement	Ensure the legal practice does not have an unacceptable conflict of interest at the commencement of a matter and recognises and manages potential conflicts as they arise during the conduct of the matter	
Steps	Maintain Records	<p>To ensure a current and complete record of current, previous clients and related entities is maintained: The responsible practice manager must:</p> <ul style="list-style-type: none"> • Maintain a conflicts database of all previous and current clients and related entities <ul style="list-style-type: none"> ○ Continually update the database with new information ○ Populate the database with current, previous clients and related entities of acquired legal practices or following a merger ○ Ensure all lawyers requiring access to the database have access and know how to interrogate information • The partner accountable for a matter must provide the practice manager with the legal and identity checked names of clients and related parties as they become known
	Check conflict	<ul style="list-style-type: none"> • To identify an actual or potential conflict, the accountable partner or other senior lawyer should consider: <ul style="list-style-type: none"> ○ The potential to act for more than one party in the matter ○ Where the interests of a former client may be affected ○ Where the legal practice has an interest which may conflict with the potential client • To ensure that potential conflicts are detected prior to deciding to act in the matter the accountable partner or other senior lawyer must: <ul style="list-style-type: none"> ○ Confirm the name of each client and where relevant, identify the names of directors, shareholders and associated entities of each client (refer to Client Identity Toolkit) ○ Compare the names captured during identity checking with the names in the conflicts database ○ Email the names identified to at least all partners and senior lawyers ○ Identify any related party whose interests might be affected by the work and determine: <ul style="list-style-type: none"> • is the client a potentially conflicted agent for that related party such as one child engaging legal practice to draft a will on behalf of the parent; a director engaging legal practice on behalf of a Company, where its interests and directors potentially differ • is the related party unrepresented and might they reasonably rely on the legal practice's advice
	Monitor conflicts	<p>The partner or other senior lawyer accountable for the conduct of the matter must ensure ongoing monitoring of potential conflicts which emerge during the conduct of the matter:</p> <ul style="list-style-type: none"> • During ongoing file reviews • Upon any of following events: <ul style="list-style-type: none"> ○ the legal practice is acting for one client in a matter and commences acting for another client in the same or related matter ○ the other parties to the matter change or there is a new party ○ the legal practice acts for multiple clients, whose interests or potential interests no longer align ○ the legal practice develops its own interest in the matter such as costs recovery ○ an allegation of misconduct is made against the legal practice by the client/other party ○ the legal practice employs new professional or support staff
	Manage conflicts	<p>Where the senior lawyer accountable for the matter identifies an actual or potential conflict the conflict should be immediately communicated to the partner accountable for the practice area of the managing partner to manage resolution</p> <p>The accountable partner must:</p> <ul style="list-style-type: none"> • Determine whether the conflict can be managed in a manner permissible under the relevant Solicitor's Conduct Rules, common law and equity • If so, take required actions to manage the conflict and: <ul style="list-style-type: none"> ○ ensure these actions are documented ○ monitor the effectiveness of these actions in managing the conflict • If the conflict cannot be managed in a permissible manner, decline to act in the matter in writing