

# Providing Phase Assistance



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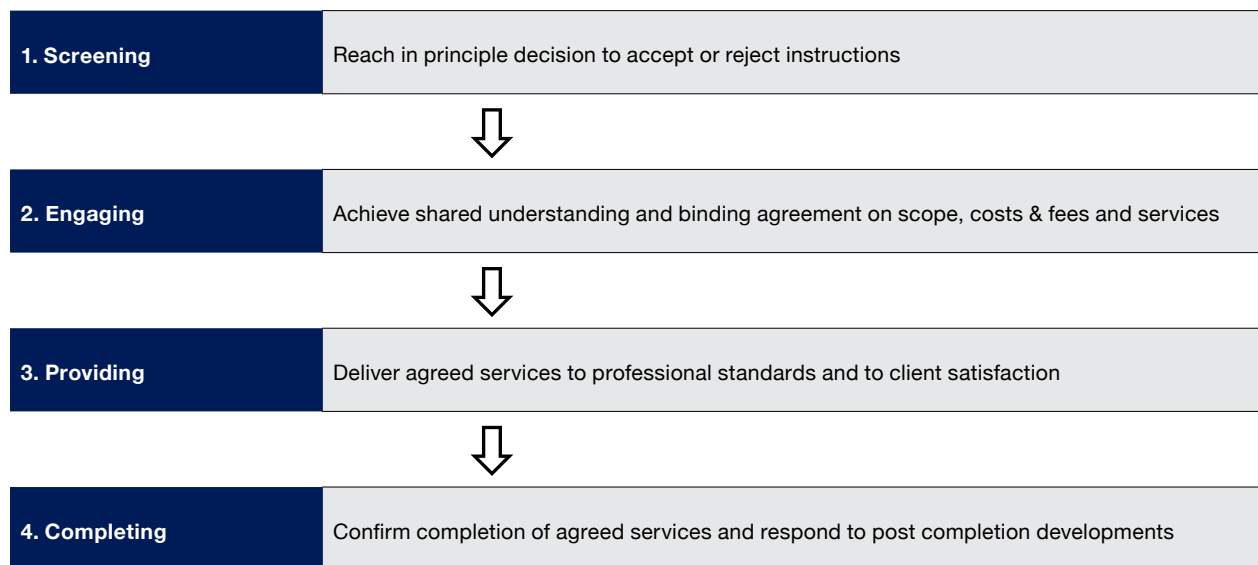
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# This Document

This document assists legal practices to meet the Requirements of Law Mutual’s Matter Management Guidelines that apply to the Providing Phase 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

# Providing Phase Key Activities

Providing Phase Key Activities are as follows:

- Implement a legal strategy
- Undertake further investigation
- Conduct legal research
- Engage experts
- Draft and lodge documents
- Provide advice & representation
- Render bills

# Details of Key Activities

## Implement a legal strategy

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Develop, communicate, and implement a legal strategy to achieve client objectives</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Assess the legal practice's capability to implement the strategy</li> <li>Clearly explain the strategy and its potential outcomes to the client</li> <li>Review strategy and potential outcomes whenever there is a change in client instructions or in circumstances</li> <li>Consider the sophistication of the client when advising them of the strategy and its potential outcomes</li> <li>Document advice on strategy and potential outcomes, and any client response</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>A legal strategy is how the legal practice plans to achieve client objectives in the conduct of the Matter and its outcomes</li> <li>Advice on strategy should include its advantages, disadvantages, and risks to the client, and where appropriate should canvas any feasible alternate strategies</li> <li>Periodically revisit the legal strategy during the conduct of the Matter and adapt if circumstances have changed</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> <ul style="list-style-type: none"> <li>Template advice on legal strategy</li> <li>Senior lawyers should coach and mentor juniors on how to implement a legal strategy</li> </ul> </li> <li><b>Role Clarity:</b> A senior lawyer is accountable for developing, communicating, and updating the legal strategy</li> <li><b>Motivation:</b> No specific requirement</li> <li><b>Assurance:</b> The senior lawyer should review and sign off on a strategy produced by a junior lawyer</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>The lawyer focuses too much on day-to-day legal requirements and loses sight of the 'the bigger picture', be this:           <ul style="list-style-type: none"> <li>the client's wider objectives, whether legal, commercial or personal (i.e., the legal strategy is successfully implemented but the client believes his wider objectives have not been met)</li> <li>a change in circumstances (i.e., the legal strategy no longer accords with 'the facts on the ground')</li> <li>creeping legal or factual complexity (i.e., the legal strategy cannot be successfully implemented with current resources in the time required)</li> </ul> </li> <li>The client believes they have been inadequately consulted as to the overall conduct of the Matter and/or not placed in a position to make good decisions on their behalf</li> </ul>

## Undertake further investigations

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Gather relevant facts to inform decisions, strategy, and actions in the conduct of the Matter</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Take contemporaneous notes of meetings (see <a href="#">** Contemporaneous Notes Toolkit</a>)</li> <li>Scope requirements for searches and investigations etc. and include these in cost estimates</li> <li>When confirming instructions in writing, include facts and request that they are also confirmed</li> <li>Where available, require any documents that will confirm facts that have been communicated verbally</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>Allow for language and cultural differences when gathering facts from the client and others</li> <li>Adopt a policy of not accepting/continuing a Matter unless required searches are conducted and communicate this policy to the client</li> <li>Send proofs of evidence to the client and require their confirmation</li> <li>When supervising conduct of a Matter, senior lawyers should challenge where junior and mid-level lawyers have made assumptions to fill gaps in their understanding of the facts</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> <ul style="list-style-type: none"> <li>Direction (communicated to client) of not continuing unless required searches are conducted</li> <li>Checklist for further fact checking on common Matters</li> <li>Training/mentoring on when client facts need confirmation</li> <li>Proof of evidence template</li> </ul> </li> <li><b>Role Clarity:</b> As to who is responsible for conducting factual checks such as ASIC searches</li> <li><b>Motivation:</b> No specific requirement</li> <li><b>Assurance:</b> Check boxes to confirm on the file that required factual checks have been completed</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>Bringing an action against an incorrect party</li> <li>Basing the calculation of a limitation period or other critical deadline on the wrong initiating date</li> <li>Basing a document or legal advice on incorrect facts</li> <li>Failing to recognise a relationship that gives rise to a conflict of duty</li> </ul>

## Conduct legal research

Area	Description
Requirement	<ul style="list-style-type: none"> <li>• Conduct appropriate legal research based on the most relevant and current references</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>• Maintain access to relevant, comprehensive, and current references</li> <li>• Scope requirements for legal research during engagement and include in cost estimates</li> <li>• Provide training to lawyers on use of legal research platforms and source</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>• When 'briefing' junior lawyers to conduct legal research, senior lawyers should clearly scope the legal enquiry, set some expectations for time commitment and ensure the junior lawyer is apprised of all relevant facts</li> <li>• The outcomes of legal research should include its purpose, key facts and assumptions, scope of research, key references, analysis and a conclusion</li> <li>• When providing outcomes of legal research to senior lawyers, junior lawyers should communicate any 'forks in the road' where they decided not to consider potential issues. This allows the senior lawyer to review whether those issues should be considered</li> </ul>
Controls	<ul style="list-style-type: none"> <li>• <b>Knowledge:</b> <ul style="list-style-type: none"> <li>○ Subscriptions to legal resource services</li> <li>○ Court report and legal texts</li> <li>○ Legal research template</li> </ul> </li> <li>• <b>Role Clarity:</b> The senior lawyer is accountable for the quality and detail of legal research conducted by junior lawyers</li> <li>• <b>Motivation:</b> Senior lawyers should emphasise the importance of thorough enquiry, research and analysis to understand and support the client's legal position</li> <li>• <b>Assurance:</b> The senior lawyer should review and challenge the research and conclusions drawn from it</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>• Lawyer works in unfamiliar areas of law, so they are unaware of the need for research (i.e., don't know what they don't know)</li> <li>• Inadequate understanding of recent changes to law</li> <li>• Miscommunication between senior lawyer and junior lawyer as to detail and scope of required research</li> </ul>



## Engage experts

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Engage appropriate and competent barristers and experts and then fully brief and monitor delivery of their scope of work</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Exercise a duty of care when selecting a barrister or expert</li> <li>Adequately brief the barrister or expert on the facts, issues and scope of the Matter</li> <li>Monitor delivery of work to time and budget</li> <li>Exercise a reasonable independent judgment of the expert's work on behalf of their client</li> <li>Ensure the barrister's opinion provides enough reasoning for the lawyer to exercise a reasonable independent judgment</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>Maintain a register of appropriate and competent barristers and experts</li> <li>Scope the potential need for a barrister or expert early, provide a cost estimate to the client and obtain instructions to brief</li> <li>Educate clients on the benefits to them of briefing barristers and experts to provide analysis and evidence in support of the client's case</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> <ul style="list-style-type: none"> <li>Standard briefing template</li> <li>Register of experts</li> </ul> </li> <li><b>Role Clarity:</b> A senior lawyer is accountable to selecting, engaging and managing the performance of barristers and experts</li> <li><b>Motivation:</b> No specific requirement</li> <li><b>Assurance:</b> The senior lawyers should ensure client consent to appointment and periodically monitor performance and outputs</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>Briefing a barrister or expert without the client's consent</li> <li>Failing to brief an appropriate barrister or expert where one is required</li> <li>Briefing an inappropriate or incompetent barrister or expert</li> <li>Giving the barrister or expert an inadequate brief</li> <li>Failing to monitor delivery of the barrister's or expert's work</li> <li>On receipt of a barrister's or expert's opinion, failing to exercise reasonable independent judgment on behalf of the client</li> </ul>

## Draft and lodge documents

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Use legal practice precedents and client instructions to ensure accurate and compliant documentation is drafted and lodged</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Maintain accurate and current practice precedents</li> <li>Mandatory review and signing off by the accountable senior lawyer</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>The legal practice should establish clear accountabilities and requirements for the creation, updating, storage, access, and use of its precedents</li> <li>Junior lawyers should be trained on how to select the correct precedent and adapt it to the facts and circumstances of the Matter</li> <li>Manage client expectations around deadlines for documents               <ul style="list-style-type: none"> <li>set realistic deadlines – ‘under promise and overdeliver’</li> <li>communicate to the client what they must deliver to you, and when, for you to meet their deadlines</li> <li>where client requests an unrealistic deadline:                   <ul style="list-style-type: none"> <li>explain the requirements of your drafting process and the risks to them in rushing</li> <li>ascertain the reasons for their deadline and whether their interests would be better served by extending it</li> </ul> </li> </ul> </li> <li>Create a checklist of issues to consider when preparing certain types of documents e.g., tax and stamp duty implications</li> <li>“Double diarise” for critical deadlines – enter both the deadline date and a date prior to this to commence drafting</li> <li>Develop an internal procedure and deadline for electronic lodgement of documents (e.g., courts, PEXA)</li> <li>Provide regular training and/or shared knowledge base on electronic lodgement of documents</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> <ul style="list-style-type: none"> <li>Legal practice precedents ♥</li> <li>Electronic lodgement procedure</li> <li>Document/file management procedure</li> </ul> </li> <li><b>Role Clarity:</b> A senior lawyer is accountable to ensure the most appropriate precedents are used and the correct documents are drafted based accurately on client instructions</li> <li><b>Motivation:</b> The senior lawyer should emphasise the importance of accurate and legally acceptable drafting based on an accurate record of facts and instructions</li> <li><b>Assurance:</b> The senior lawyer should review and sign off all documents drafted by a junior lawyer</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>Time constraints resulting in inadequate drafting</li> <li>Inaccurate or out-of-date templates/precedents result in errors</li> <li>Poor document management results in errors</li> <li>Failure to consider tax and stamp duty implications when drafting documents</li> </ul>

## Provide advice and representation

Area	Description
Requirement	<ul style="list-style-type: none"> <li>Act on client instructions and based on relevant law to advise, communicate, advocate, agree and initiate action with relevant third parties to achieve client objectives</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>Take contemporaneous notes of meetings (see <a href="#">** Contemporaneous Notes Toolkit</a>)</li> <li>A junior lawyer should not give verbal advice</li> <li>A senior lawyer should review written advice before it is given</li> <li>A senior lawyer should regularly supervise the day to day conduct of a Matter</li> <li>Where a junior lawyer does give verbal advice, they should immediately communicate this advice to a senior lawyer for review</li> <li>Where advice is given verbally, confirm client understanding and follow up in writing to the client or log a written file-note</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>The lawyer should adopt language and means of communication based on the client's level of sophistication, competence, and knowledge of English</li> </ul>
Controls	<ul style="list-style-type: none"> <li><b>Knowledge:</b> <ul style="list-style-type: none"> <li>Client instructions form</li> <li>Legal practice precedent library</li> </ul> </li> <li><b>Role Clarity:</b> <ul style="list-style-type: none"> <li>Junior lawyers should have clear limits on their role with regard to giving legal advice to clients and requirement to escalate</li> <li>A senior lawyer should be clear on approach to and extent of supervision during the conduct of the Matter (see <a href="#">** Supervision Toolkit</a>)</li> </ul> </li> <li><b>Motivation:</b> Senior lawyers should encourage junior lawyers to escalate issues and communicate potential mistakes</li> <li><b>Assurance:</b> <ul style="list-style-type: none"> <li>The senior lawyer should check, review and monitor performance of junior solicitors throughout the conduct of the Matter</li> <li>Anonymous surveys should be conducted with junior lawyers to confirm that they are receiving adequate supervision</li> </ul> </li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>Advice or representation is not supported by law</li> <li>Failure to communicate advice clearly and to confirm client understanding</li> </ul>

## Render bills

Area	Description
Requirement	<ul style="list-style-type: none"> <li>• Provide invoices and a description of the work the legal practice has undertaken in accordance with client engagement agreement and the relevant legislation</li> <li>• Ensure full account for monies received by and on behalf of the client</li> </ul>
Tasks	<ul style="list-style-type: none"> <li>• Implement a billing system that supports accurate and timely billing in accordance with the client engagement agreement</li> <li>• Contemporaneously and accurately record time and/or actions to support billing</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>• Implement mechanisms that ensure that clients are billed “little and often” e.g., adopt a policy of “maximum days unpaid WIP” requiring principal’s approval for a lawyer to postpone billing WIP beyond a stipulated number of days e.g., 30 days</li> <li>• Consider issuing the client a “draft bill” to defuse a potential dispute</li> </ul>
Controls	<ul style="list-style-type: none"> <li>• <b>Knowledge:</b> <ul style="list-style-type: none"> <li>○ Engagement Agreement Template, including costs agreement ♥</li> <li>○ Form or system with standard time recording fields</li> <li>○ Billing procedure including frequency and maximum WIP allowed without principal’s approval</li> </ul> </li> <li>• <b>Role Clarity:</b> As to who is responsible for issuing invoices on each Matter</li> <li>• <b>Motivation:</b> Principals should discuss WIP and invoicing with lawyers and explain its importance to managing client expectations</li> <li>• <b>Assurance:</b> A principal or the managing partner/director should regularly monitor WIP on all Matters</li> </ul>
What could go wrong	<ul style="list-style-type: none"> <li>• Significant dispute with client over fees, resulting in requirement to write off fees</li> <li>• Complaint to relevant authority (Legal Services Complaints Committee in WA)</li> </ul>

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