

Screening Phase Assistance

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Prepared by

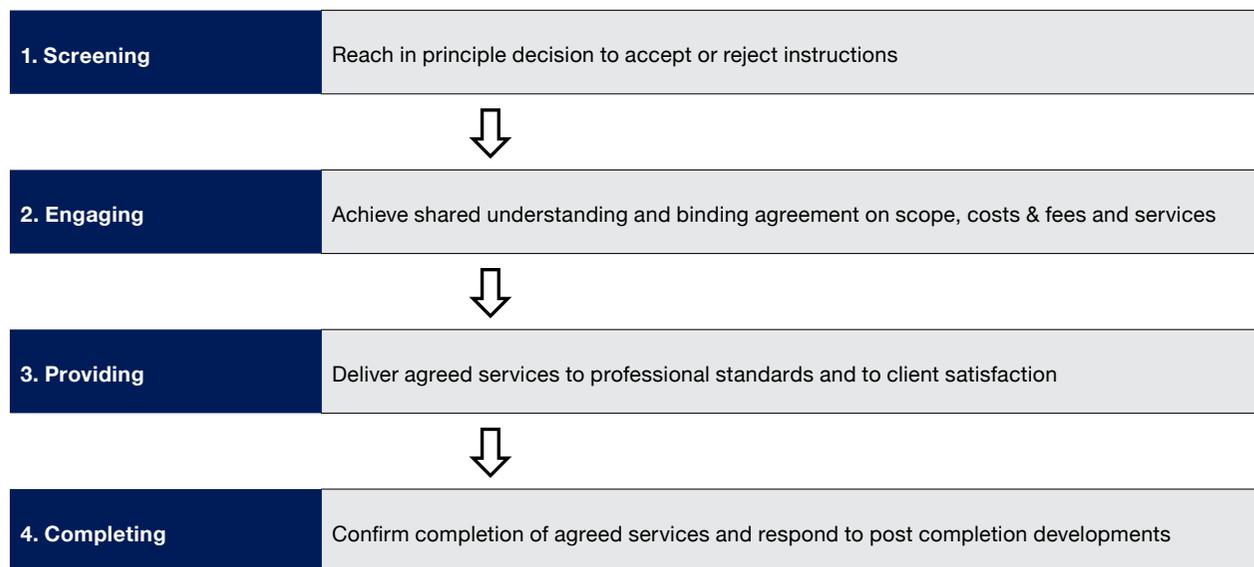
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This Document

This document assists legal practices to meet the Requirements of Law Mutual’s Matter Management Guidelines that apply to the Screening 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>How principals ensure people know and understand the method to meet a Requirement</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"> • training or mentoring (suitable where the method is variable and/or nuanced e.g. method for managing client expectations) • documentation and tools (e.g. procedures, checklists or templates – suitable where the method requires completion of specific tasks) • embedded via business rules into IT systems (e.g. IT system does not allow invoicing until conflicts check completed)
Role clarity	<p>How people know what aspects of the method they are accountable or responsible for, and what aspects lie outside their authority</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"> • each task that leads to the outcome; and • limits of authority, i.e. who cannot do certain tasks without approval <p>Confusion over who is accountable or responsible leads to errors. Key accountabilities and responsibilities should be documented.</p>
Motivation	<p>How principals motivate people to follow the method through leadership, culture, performance review and other mechanisms</p> <p>Mechanisms to motivate lawyers to implement the method include:</p> <ul style="list-style-type: none"> • demonstrated leadership (i.e. walking the walk) • recognising performance, especially for important tasks that typically go unrecognised e.g. good scoping prior to engagement • aligning performance metrics with the method; i.e. measuring more than billable hours
Assurance	<p>How principals have comfort that the method has been followed</p> <p>Principals should ensure relevant checks, reviews and sign off for higher risk activities:</p> <ul style="list-style-type: none"> • an assurance control might be as simple as requiring initials against a checklist on the file. • 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.

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

Screening Phase Key Activities

Screening Phase Key Activities are as follows:

- Confirm identity and authority
- Understand nature of legal need
- Check for conflict of interest
- Assess prospective client
- Determine capability to conduct Matter
- Communicate legal practice's capability to act on client's behalf
- Decide to accept or reject prospective client or Matter

Details of Key Activities

Confirm identity and authority

Area	Description
Requirement	<ul style="list-style-type: none"> Verify the prospective client's identity and ensure they have authority to instruct you
Tasks	<ul style="list-style-type: none"> Where you are acting for more than one client, (e.g. family members) meet or at a minimum communicate with each potential client Confirm the legal identity of each potential client Identify any related party (i.e. anyone whose interests might be affected by the Matter and whom you do not intend to be a client) and communicate to the related party that the legal practice is not providing advice to them Communicate to the client(s) that an engagement agreement must be signed by all clients and will provide for clear authorities such as: <ul style="list-style-type: none"> where you are acting for a corporate body or business, the engagement agreement must be appropriately authorised by the company or business owners how advice is to be given and instructions received from each client (e.g. via an authorised representative) <p>(see ** Client Identity Toolkit for further details)</p>
Guidance	<ul style="list-style-type: none"> If it is not possible to meet the prospective client in person, a teleconference or videoconference should be conducted with the client (client representatives in the case of a corporation) Relevant enquiries include sighting/copying the client's driver's licence or passport; conducting a title search or corporate structure search Check all prospective clients where instructions are given by one prospective client on behalf of other clients in a joint Matter All clients in a joint Matter, regardless of who has given instructions, should consent to instructions
Controls	<ul style="list-style-type: none"> Knowledge: Client identity and authority checklist (critical control requirement; see ** Client Identity Toolkit) Role Clarity: A senior lawyer should have accountability for ensuring the prospective client's identity and authority is fully understood and confirmed Motivation: No specific requirement Assurance: The senior lawyer should supervise the conduct of and check the outcomes of relevant searches where this is delegated to junior lawyers
What could go wrong	<ul style="list-style-type: none"> The person you are talking to is not who they say they are The person you are talking to incorrectly describing the client they purport to represent Engaging with the wrong client due to complexity of prospective client's corporate and ownership structure The person you are talking does not have the authority to instruct you on behalf of the prospective client or other prospective clients (e.g. officer without authority to instruct on behalf of a company or one family member without authority to instruct on behalf of another family member)

Understand nature of legal need

Area	Description
Requirement	<ul style="list-style-type: none"> Take sufficient instructions to understand the facts, the legal issues to be addressed and the overall approach to conducting the Matter
Tasks	<ul style="list-style-type: none"> Ensure the prospective client has adequately communicated material facts to inform preliminary analysis of the legal issues Confirm the prospective client's objectives and requirements for the conduct and resolution of the Matter Review key documentation that is necessary to understand the Matter
Guidance	<ul style="list-style-type: none"> Process for setting up first appointment should include a request to the prospect to provide information before the meeting and communication as to whether the purpose of the first appointment is to provide initial advice or decide on engagement Question the prospective client to ensure there is an adequate disclosure of material facts Be wary of the prospective client who believes they know the legal answers and rushes to tell you before disclosing all the facts Do not over-rely on prospective client's understanding of key facts e.g., defendant identity Request supporting documentation where appropriate Do not act on instructions where there are reasonable grounds to believe that the instructions are affected by duress or undue influence until satisfied they reflect prospective client's wishes Consider whether a senior lawyer should attend the initial meeting
Controls	<ul style="list-style-type: none"> Knowledge: Standard instruction form with prompts to capture the nature of the legal need Role Clarity: A senior lawyer should have accountability for ensuring there is a correct understanding of the nature of the legal need Motivation: No specific requirement Assurance: A senior lawyer should review the completed instruction form where initial instructions are taken by more junior lawyers
What could go wrong	<ul style="list-style-type: none"> Deciding to take on a Matter without a full understanding of its facts and issues Giving preliminary advice based on insufficient understanding of facts or issues, prejudicing the client Accepting the Matter without having identified an imminent and critical deadline Breach of the relevant Solicitors Conduct Rules if the Matter is beyond the competence of lawyer or if the client's lawful, proper and competent instructions have not been followed

Check for conflict of interest

Area	Description
Requirement	<ul style="list-style-type: none"> Determine whether the legal practice has any potential conflict of interest and, if so, either decline the instructions or manage the potential conflict in a legally permissible manner
Tasks	<ul style="list-style-type: none"> Maintain a record of former and current clients and related parties (i.e., anyone whose interests might be affected by the work); other parties to Matters and the Matter description Check the names of directors/relevant shareholders/associated entities of the client When taking instructions identify any related party and determine whether the client is a conflicted agent for that related party, and whether the related party is unrepresented and might reasonably rely on the legal practice's advice Check there is no conflict with former or current clients or lawyers/personnel in the legal practice Create a requirement or mechanism that no file can be opened until conflicts check completed Undertake ongoing checks throughout the conduct of Matter to ensure no new conflict emerges Where a potential conflict exists, determine whether it can be managed in a manner permissible under the relevant Solicitor's Conduct Rules, common law and equity If the potential conflict cannot be managed in a legally permissible manner, decline the instructions If the potential conflict can be managed in a legally permissible manner, document and monitor actions to manage the potential conflict <p>(see ** Conflicts Management Toolkit for further details)</p>
Guidance	<ul style="list-style-type: none"> While a comprehensive conflicts record provides a sound foundation, identifying all related parties and potential conflicts of interest requires legal understanding. Legal practices should not reduce the conflicts checking process entirely to a "database check" or to a task conducted only by non-legal or junior legal staff. Legal practices should carefully consider the risk of a conflict before accepting "red flag instructions" that are highly likely to create a conflict. Emailing all staff the details of new instructions enables staff to communicate relationships that might pose a conflict beyond information captured by the client database (e.g. parties who are related to an employee of the legal practice) Larger legal practices should formalise an approach to manage conflicts to avoid issues between two principals both desiring to take on conflicted clients Post engagement, legal practices should check for new conflicts whenever changes to circumstances arise

Area	Description
Controls	<ul style="list-style-type: none"> • Knowledge: <ul style="list-style-type: none"> ○ Conflicts database ♥ ○ Requirements for: ♥ ** <ul style="list-style-type: none"> • update of conflicts database i.e. what information, who must input it and when • initial conflicts check, ongoing monitoring and management of identified conflict <p>(see ** Conflicts Management Toolkit)</p> • Role Clarity: <ul style="list-style-type: none"> ○ For each new enquiry or Matter the Partner should have accountability for conflict checking and management ○ In larger legal practices, the Managing Partner should have responsibility for resolving any potential conflict issue between Principals • Motivation: No specific requirement • Assurance: Require the individual who has conducted the conflicts check to sign off/initial on the file that this has occurred
What could go wrong	<ul style="list-style-type: none"> • Acting in a situation of conflict such as: <ul style="list-style-type: none"> ○ current client vs former client or another current client ○ current client vs lawyer/legal practice ○ current client vs duty to the court ○ lawyer/legal practice vs duty to the court • Acting for 'a group' where members of the group have potentially different interests • Taking instructions from an agent on behalf of a principal, where the agent's interests differ from the principal's (e.g. director on behalf of the company, person on behalf of an in practice relative, friend or neighbour with instructions to create will or power of attorney)

Assess prospective client

Area	Description
Requirement	<ul style="list-style-type: none"> • Conduct relevant enquiries and searches to determine the prospective client’s suitability and gauge their capacity and level of sophistication
Tasks	<ul style="list-style-type: none"> • Make sufficient enquiries to identify risks • Conduct sufficient searches, including financial checks and involvement in previous litigation, to identify risks • Ensure that risks are adequately considered before the legal practice accepts a potential client • Where an initial meeting is not conducted by a senior lawyer, ensure there is enough information for the senior lawyer to exercise judgment regarding the suitability of and risks associated with accepting the prospective client • Where the legal practice decides to accept a prospective client despite risks, consider further measures to manage the prospective client and protect the legal practice <p>(see ** Client Risk Toolkit for further details)</p>
Guidance	<ul style="list-style-type: none"> • Legal practices should develop a list of risk indicators to assist in the identification of high risk clients. Risk indicators include: <ul style="list-style-type: none"> ○ financial difficulties ○ instructed other lawyers previously on the Matter ○ overbearing, high conflict, or highly litigious ○ armed by knowledge gleaned from internet and/or lots of documentation ○ unrealistic expectations as to outcome, time or fees ○ highly critical of lawyers or other experts ○ unwilling to place money on trust ○ motivated primarily by emotions, revenge or need to prove a point or principle • Further measures to manage the prospective client and protect the legal practice might include: <ul style="list-style-type: none"> ○ special requirements regarding money on trust ○ special conditions in the engagement agreement • Assigning a more senior lawyer to manage the relationship

Area	Description
Controls	<ul style="list-style-type: none"> • Knowledge: <ul style="list-style-type: none"> ○ Standard instruction form that includes: <ul style="list-style-type: none"> • risk indicator checklist and/or prompts for capturing risk related information • sign off procedure by accountable senior lawyer ○ Client credit checking procedure • Role Clarity: A senior lawyer should have accountability for ensuring suitability of the prospective client and conducting relevant background checks • Motivation: Legal practices should develop a culture that encourages junior and mid-level lawyers to quickly elevate issues, including issues that arise in client relationships • Assurance: The senior lawyer should review and sign off on background checks for all new clients
What could go wrong	<ul style="list-style-type: none"> • The prospective client has unlawful or unethical intentions • The prospective client has difficulty paying legal fees and/or disputes value of work performed • The prospective client has unreasonable expectation and holds the legal practice responsible when expectations are not met • A “difficult” client exacts emotional toll on staff and/or requires significant non-chargeable hours to manage • The prospective client is legally incapable of giving instructions (e.g. mental capacity, insolvent corporate bodies and deadlocked corporate bodies) • The legal practice treats an unsophisticated client (as understood by the Act) as if they were a sophisticated client

Determine capability to conduct Matter

Area	Description
Requirement	<ul style="list-style-type: none"> Determine whether the legal practice has the capability and appetite to conduct any Matter that is high risk, complex or unusual
Tasks	<ul style="list-style-type: none"> Decide whether the legal practice can adequately offer representation, and has sufficient resources and competence to deal with the Matter Determine whether additional resources are required outside the legal practice and if so the implications in accepting the Matter Determine whether the type of Matter is within the risk appetite of the legal practice
Guidance	<ul style="list-style-type: none"> The legal practice should be clear on the types of Matters it will and will not accept and capture this in a Risk Appetite Statement Risk appetite includes factors such as the practice area, complexity of Matter, jurisdiction, third party requirement, limitation date or other critical deadlines Junior lawyers should be encouraged to raise concerns about risks and issues with senior lawyers
Controls	<ul style="list-style-type: none"> Knowledge: <ul style="list-style-type: none"> A Risk Appetite Statement ♥ that: <ul style="list-style-type: none"> sets limits on the work the legal practice is prepared to accept mandates controls for higher risk matters and clients Role Clarity: Mandatory signing off on acceptance of new instructions by accountable senior lawyer Motivation: Principals should regularly communicate to other staff when they have turned down work that was outside the legal practice's risk appetite and the importance of all lawyers in doing so Assurance: The principal should check to ensure the legal practice is operating within its risk appetite and does not take on inappropriate Matters
What could go wrong	<ul style="list-style-type: none"> Breach of relevant Solicitor's Conduct Rules if the Matter is beyond competence of lawyer Poor service outcome due to inadequate resources (financial, staff capability and capacity and time) to conduct the Matter

Communicate legal practice's capability to act

Area	Description
Requirement	<ul style="list-style-type: none"> Ensure the prospective client understands the legal practice's capability (and limits) to act on their behalf to meet their objectives
Tasks	<ul style="list-style-type: none"> Ensure the prospective client understands that the legal practice is not acting until a formal engagement offer has been accepted (usually by signing of a client engagement agreement) Ensure that the prospective client understands what is being communicated through clear language that is appropriate for the prospective client Explain how the Matter will be conducted with indicative actions, time frames and costs Explain what is required from prospective client, and when, to meet these time frames Explain legal practice resources and capability to act Confirm key points in writing following verbal communication
Guidance	<ul style="list-style-type: none"> The lawyer should adopt language and means of communication based on factors such as the prospective client's level of sophistication, competence and knowledge of English Take note especially of time constraints and limitation periods and ensure the prospective client understands that no action will be taken until instructions are accepted and a client engagement agreement is signed
Controls	<ul style="list-style-type: none"> Knowledge: Legal practice capability statement (brochure or online) outlining extent of services, areas of specialisation and team capability Role Clarity: A senior lawyer should be assigned accountability for ensuring the legal practice's capability and approach is understood by the prospective client Motivation: No specific requirement Assurance: The senior lawyer should check and sign off on information prepared by a junior lawyer
What could go wrong	<ul style="list-style-type: none"> A prospective client assumes legal practice is acting for them in or immediately following initial meeting when this is not the legal practice's intention The prospective client misunderstands the legal practice's capability and approach and holds lawyer responsible when expectations as to outcomes, costs, timing or service levels are not met

Accept or reject Matter

Area	Description
Requirement	<ul style="list-style-type: none"> Consider key risks identified during screening, decide whether to take on Matter and communicate to the prospective client and related parties
Tasks	<ul style="list-style-type: none"> Ensure lawyers do not by their conduct create a solicitor/client relationship outside the legal practice's client screening and engagement controls Ensure that the accountable senior lawyer for each prospective client has sufficient information to exercise judgment as to whether the legal practice should accept or reject the client or Matter If accepting the Matter, communicate the decision in writing to the prospective client in a timely manner and advise the prospective client that the legal practice is not acting until the formal engagement offer has been accepted If rejecting the Matter, communicate the decision to the prospective client in a timely manner
Guidance	<ul style="list-style-type: none"> Legal practices should provide training to legal staff on how to avoid creating a solicitor/client relationship especially when fielding legal queries from family and friends and meeting with prospects When communicating to the new client, provide clear instructions as to what they must do and what they must provide, and when, for legal practice to meet the client's objectives
Controls	<ul style="list-style-type: none"> Knowledge: <ul style="list-style-type: none"> Direction on who can and cannot screen and accept instructions on behalf of the legal practice Standard letter accepting instructions Standard letter declining to act Checklist for declining a Matter Role Clarity: A senior lawyer should be assigned accountability for deciding to accept or reject a Matter and responsibility for communicating this to the prospective client Motivation: No specific requirement Assurance: The senior lawyer should review and sign off on any communication regarding acceptance and rejection of the Matter
What could go wrong	<ul style="list-style-type: none"> Lawyer's conduct unintentionally creating a solicitor/client relationship and fiduciary duty, but the prospective client is not identified as such by the legal practice (e.g., off the cuff advice to family or friends, or 'preliminary advice' in a marketing meeting) Legal practice accepts engagement without adequate consideration of a risks identified during Screening

Contact Law Mutual (WA) for further information. All enquiries are treated with the utmost confidentiality.

Street Address:

Level 4, 160 St Georges Terrace,
Perth, WA 6000

Postal Address:

PO Box Z5345, Perth WA 6831

Phone: (08) 9481 3111 **Fax:** (08) 9481 3166

Email: info@lawmutualwa.com.au

Web: lawmutualwa.com.au

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