

# Business Continuity and Succession Planning

Solo and Small Legal Practices

A Quick Reference Guide

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# 1. Overview

This resource has been prepared with our sole practitioners and smaller practices in mind. However all legal practices in Queensland should have a business continuity plan and may find information in this guide of assistance.

Sole practitioner and sole legal practitioner director legal practices are particularly vulnerable to disruption if the practitioner is suddenly unable to fulfil all (or part of) their duties due to illness, incapacity, or death. If you operate as a partnership, what would be the effect of the death or incapacity of one of your partners on your practice?

External events such as natural disasters (eg cyclones, floods, bush fires) and supervening events (such as cyber-attacks, data breaches, pandemics and media crisis) may also impact on our ability to effectively manage our legal practices.

## 2. What is Business Continuity Planning?

Business continuity planning aims to safeguard your practice, clients, investment and family by ensuring any critical incident (illness, incapacity or natural disaster) has as little disruption as possible on your normal practice operations. Contingency planning is the key to creating a sustainable practice. Planning for contingencies is an effective risk management strategy which can reduce claims against your practice, prevent regulatory intervention and uphold your reputation.

## 3. Risk Management Plan

Risk management involves identifying risks, assessing the impact of risks and developing strategies to manage those risks to ensure the continuity of your business.

Prevention is ideal, but your business continuity plan will commence when preventative controls have failed.

### What should you consider?

If you have never prepared a business continuity plan before you will need to prepare for:

- illness or absence of staff;
- restrictions of movement/inability to attend the office (access to hard copy records / safe custody);
- inability to contact or meet with clients due to illness, self-isolating or quarantine;
- damage or destruction of records (eg fire, flood, data loss);
- changes to your ongoing communications;
- disruptions to your suppliers (internet, electricity); and/or
- financial impact.

Often business continuity plans will address melodramatic risks and their impacts in business and life but fail to consider mundane risks. If your plan is prepared for melodramatic events you will easily be able to scale it back and apply it to mundane risks that often arise such as loss of power or internet, but may also arise from and compound with melodramatic risks. Some examples of both are:

- natural disasters;
- pandemics (SARS, Flu, COVID-19);
- reputational risks / media crisis;
- technological failures;
- interruption to services / utilities (power failure, no internet);

- disruption to suppliers;
- illness, absence or sudden loss of staff / key staff (flu season, death, incapacity);
- market changes;
- security (cyber-hacks, data breaches, fraud, terrorism, extortion, physical threats to staff);
- Government policy / legislative changes; and/or
- Workplace Health and Safety.

## 4. Business impact analysis

A business impact analysis assesses how risks identified in your risk management plan might affect business operations. It identifies activities that are critical for the survival of your business and prioritises what has to be done to maintain them.

A risk analysis matrix is a simple way to document identified risks, likelihood and potential impact on your practice. Using a matrix allows you to consider the priority level of each threat and how you would like to respond.

	Likelihood			
Consequence	Low	Medium	High	Very High
Low	Low	Low	Medium	Medium
Medium	Low	Medium		High
High	Medium	High		Very High
Very High	High		Very High	

### Example:

The likelihood of a cyclone affecting a practice in North Queensland is likely to be high/very high and the consequence medium-very high depending on its severity.

In contrast, the likelihood of a cyclone affecting a practice in the Southern Downs region is likely to be low and the consequence low.

How well would you cope if you had to evacuate your offices and were not able to return for several days? What if you were left without power, telephones or internet? What if a cyclone were to hit after hours (eg on a weekend), would you be prepared? Who would manage the practice or a client's matter if a cyclone resulted in the death or incapacity of a critical employee?

### Changes to your ongoing communications

Your business operations may be impacted by a critical incident and by government decisions and policies during and following the incident.

You need to consider your different audiences – your staff, clients, referrers, and suppliers / providers.

The aim of any communication should be to notify what has/is happening; what is planned; where they can obtain more information; and what they need to do, and when.

The amount of information you provide might depend on your audience but clients need to be informed of any changes to your business hours, office location, telephone or other contact details. Importantly, should you need to implement a succession plan, all parties should be notified of the relevant changes.

Similarly, you should ask clients to notify you of any changes to their contact details if they are also impacted by the critical incident.

It is a good idea to discuss your proposed arrangements directly with your current clients, where possible. Email updates, website notices or social media are other ways of keeping your clients, or former clients and local community informed.

## Financial impact

You must carefully monitor all financial transactions.

- Criminals often see critical incidents as an ideal opportunity to carry out fraud and other illegal activity. Think about what steps you will take with your internal communications (if you are unable to meet face-to-face) to verify financial transactions before payment (whether to clients, to staff or to external suppliers).

What steps do you need to take to ensure your trust account and trust account records are secured?

- It is always important to have a business budget in place, but cash flow planning is particularly important during a critical incident. You may need to review your regular cash flow plan.

Depending on the nature of the incident, and the expected interruption to your usual business activities, you may need to review upcoming expenditure and cancel or defer expenses.

- You may need to speak to your accountant or the ATO if you are unable to lodge BAS on time due to loss, destruction or inability to access records. If you are unable to pay your BAS you should, if possible, still lodge on time, and then negotiate a payment plan with the ATO.

You are required to provide QLS with a written 'Show Cause Event' notice within seven days of the event, including:

- (i) If you fail to attend to your tax obligations and are subsequently convicted of a tax offence; or
- (ii) If you present a debtor's petition or arrangement with creditors under Part IX or Part X of the *Bankruptcy Act 1966* (Cth); or
- (iii) If you are a legal practice director for an incorporated legal practice that becomes an externally administered body under Chapter 5 of the *Corporations Act 2001* (Cth).

See [QLS Form 7](#) and s 68(1)(a) of the *Legal Profession Act 2007* (Qld). For more information about 'Show Cause Events' refer to the [QLS website](#).

## 5. Incident Response Plan

An incident response plan outlines actions to:

- avoid the risk (discontinue activities giving rise to the risk)
- reduce or mitigate the risk (take steps to reduce likelihood of risk)
- share the risk (insurance)
- retain or accept the risk (cost / benefit analysis).

Incident response actions may include:

- insurance
  - professional indemnity (including top-up cover)
  - public liability
  - business interruption
  - WorkCover
  - cyber
  - key person
  - business expenses
  - income protection
  - ATO audit.
- contingency and succession plans
- quality management
- staff training and cross-training
- emergency drills where 'back-up' staff members carry out essential duties of other staff members
- workplace health and safety strategies
- equipment maintenance plans
- appropriate security arrangements
- staff retention and succession strategies.

There are generally three stages to a critical incident response – immediate emergency response; crisis management and business recovery.

	Likelihood			
Consequence	Low	Medium	High	Very High
Low	Low	Low	Medium	Medium
Medium	Low	Medium		High
High	Medium	High		Very High
Very High	High		Very High	

### Examples:

Risk Description	Likelihood	Impact	Preventative Action	Contingency Plans
Inability to access internet and online practice management system for diary / calendar key dates	Medium	Very High	<p>Local back-up of calendar / cloud data.</p> <p>Print out calendar daily / weekly (subject to specific practice requirements).</p> <p>Key dates entered on front of each file.</p>	<p>Review cloud based systems to ensure access to data if internet outage ie sync to google or outlook calendar on phone</p> <p>Print calendar daily / weekly (subject to specific practice requirements)</p>

Risk Description	Likelihood	Impact	Preventative Action	Contingency Plans
Principal / partner suffers a health event and is unable to attend office	Low	High	Regular medical check ups  Regular holidays and breaks from office  Regular physical and mental health exercises  Staff training  Staff retention and succession strategies	Practitioner to have enduring power of attorney and will regularly reviewed  If partnership, partnership agreement to specify what is to occur re: decision-making in event of illness / incapacity  Identified practitioner who can stand in for principal / partner.  Key man insurance  Income protection insurance  Lexon Help Now program  Professional indemnity insurance

## 6. Recovery Plan

The purpose of your recovery plan is to shorten recovery time and minimise business losses following a critical incident. It sets time frames for resumption of usual business operations.

Ideally your starting point for your recovery plan would be a 'worse case' scenario – if your critical incident was not a 'worse case' scenario, you can modify your plan according to the degree of loss to your practice.

Issues you should consider for your recovery plan are:

- What is your strategy going to be to maintain your critical services while implementing your recovery plan?
- Have you factored your health and mental well-being into your strategy?
- What additional resources will you require to recover your operations (eg do you need a new server, new internet provider, do you need to reconstruct your office dwelling / find alternate accommodation).
- Identify who will have responsibility for each task and the expected time frame for completion of the task.

**Examples:**

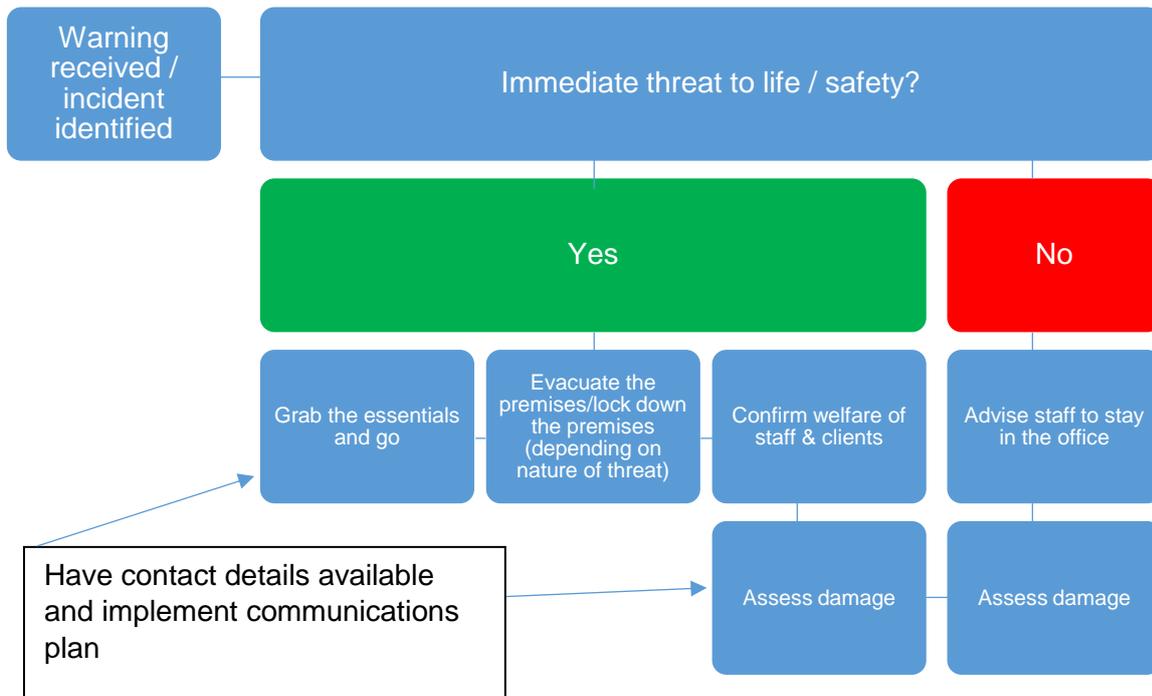
<b>Critical incident</b>	<b>Recovery actions</b>	<b>Requirements</b>	<b>Recovery time estimate</b>	<b>Responsibility</b>	<b>Date Completed</b>
Inability to access internet and online practice management system for diary / calendar key dates	<p>Consider mobile broadband as back up option</p> <p>Review provider service standards</p> <p>Contact practice management provider for alternate access arrangements to data</p> <p>Consider remote / off-site working arrangements if not 'whole of area' outage</p>	<p>Annual or monthly mobile broadband plan</p> <p>Consider alternate providers</p> <p>Remote working capability</p> <p>Local data storage and access</p>	1 week	Office manager	

<b>Critical incident</b>	<b>Recovery actions</b>	<b>Requirements</b>	<b>Recovery time estimate</b>	<b>Responsibility</b>	<b>Date Completed</b>
Principal / partner suffers a health event and is unable to attend office	<p>Consider if existing staff are able to manage</p> <p>Consider whether locum or reciprocal arrangement needs to be invoked</p> <p>Review of all files and key dates</p> <p>Contact current clients</p>	Enduring power of attorney / partnership agreement or consent	Depends on condition	<p>Other Partners</p> <p>Attorney appointed under the power of attorney</p>	

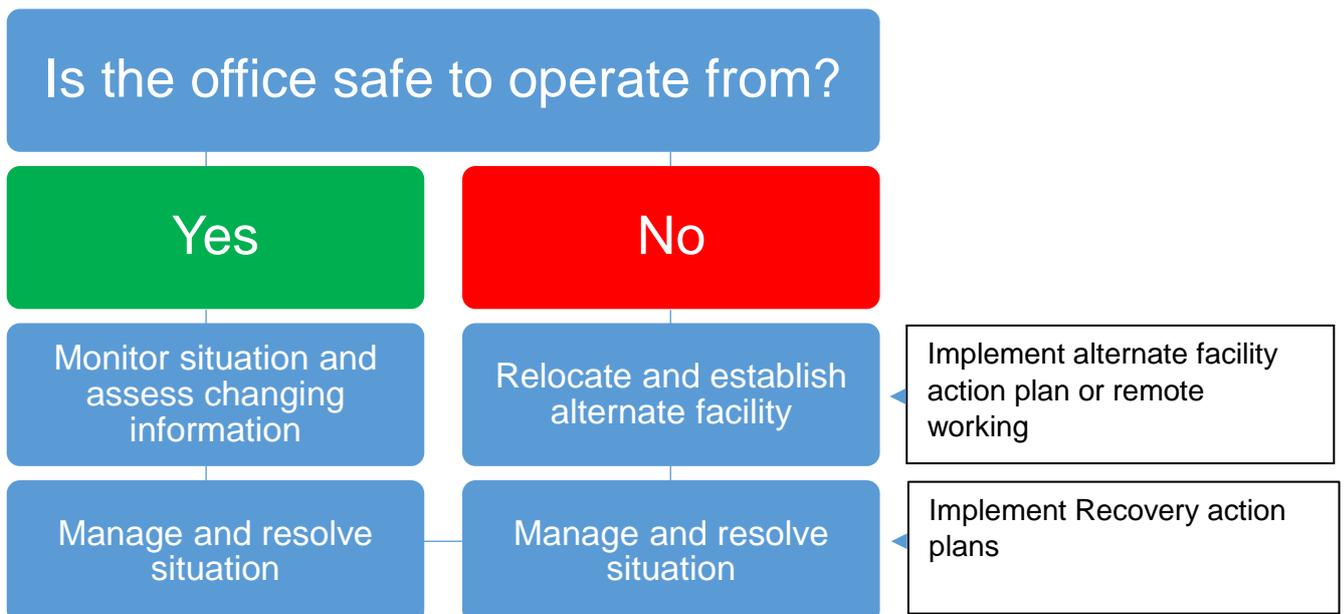
# 7. Checklists for Business Continuity

Your legal practice systems are unique, your business continuity plan will be unique as well. These checklists are designed to guide you through the business continuity planning process using your knowledge and experience of the systems and practices you have in place in your legal practice.

## Step 1:



## Step 2:



## ESSENTIAL PERSONAL INFORMATION FOR PARTNERS, PRINCIPALS & DIRECTORS

- Record your essential personal details in a register (this could be a spreadsheet, notebook stored off-site, word document printed and saved locally and in the cloud) examples include: Australian Business Number (ABN) for sole traders, Tax File Number (TFN), Business name registration details, login username for myGov.
- Record your banking details include specifics such as whether a debit card, security toggle (and if so, how many allocated to whom) or cheque book has issued for a particular account.
- Record details of your insurance policies, include contact details. Ideally you should scan copies of the policies and save locally and to the cloud.
- Who to contact if you are ill, lose capacity or die, and where to locate the documents appointing your attorney or executor.
- For ILP's a general power of attorney is recommended.
- For partnerships it is suggested the deed of partnership address the impact of death, illness or incapacity on a partner's role.
- The person you nominate as executor or attorney may be responsible for conducting and, if necessary, winding up, merging or selling your practice. Consider whether the chosen attorney or executor will have capacity to manage the additional workload.
- Ideally your chosen attorney will have knowledge of your practice area(s).
- If your attorney or executor is not a legal practitioner, they might be able to employ a suitably qualified person to oversee your practice (ie principal practising certificate, appropriate professional indemnity insurance). Appropriate directions and authorisations will be required in the appointing document.
- If you are the sole Director of an ILP, your attorney or executor may need to meet additional requirements imposed on Directors under the *Corporations Act 2001* (Cth).

## ESSENTIAL BUSINESS INFORMATION

- Record your essential business details in a register (this could be a spreadsheet, notebook stored off-site, word document printed and saved locally and in the cloud) examples include:
  - Australian Business Number (ABN)
  - Australian Company Number (ACN)
  - Business Tax File Number (TFN)
  - Business name registration details
  - Login username for myGov, QLS, Lexon, ASIC, ATO etc.
- Record your banking details include specifics such as whether a debit card, security toggle (and if so, how many allocated to whom) or cheque book has issued for a particular account.
- Record your trust account details including who may authorise trust account withdrawals, who has possession of any security tokens (for EFT payments) and secure your trust account cheques.
- Record your business debt details include details of the amount owing, payment dates and amounts, reference number, contact details and whether you hold any insurance for those debts.
- Record the details of building, equipment and car leases including start date, expiry date, renewal and option dates, landlord's contact details, rental amounts and due dates. If paid by direct debit note the account from which the debit is made.
- Record details of your insurance policies, include contact details. Ideally you should scan copies of the policies and save locally and to the cloud.
- Spare keys, security codes.
- Do you hold documents in safe custody and are they safe? Is there an up-to-date wills and powers of attorney register recording details of all practitioner appointments as executor or attorney on behalf of clients?

## EMERGENCY KIT – WH&S

- First aid kit and manual
- Battery powered torch and spare batteries
- Phone or camera to take photographs for insurance claims
- Masking tape
- Plastic sheeting / tarpaulin
- Woollen and thermal blankets
- Personal protective equipment – gloves, masks, safety glasses or disinfectant
- Waterproof bags for valuables
- Mobile phone battery pack / charger
- Basic office supplies including cables, wireless internet access and stationery kit.

## ESSENTIAL CONTACT DETAILS

- You need to ensure that if you cannot access your central contacts list (eg data breach) that you can still reach out to various groups. Broadly these will be staff, clients (current), other legal practitioners, referrers and suppliers / providers, and clients (former).
- For all staff it is a good idea to record an 'in case of emergency contact person' and ensure it remains up to date with contact numbers and email addresses.
- Emergency services contacts ie local SES, road conditions and closures, weather warnings; health warnings [www.qld.gov.au/emergency](http://www.qld.gov.au/emergency).
- Some suggestions for suppliers / providers include:
  - bank manager / account manager;
  - your firm's legal adviser;
  - your firm's accountant / financial adviser / insurance broker;
  - maintenance providers (for those with premises) eg air-conditioning, electrician, plumber, fire detection system / firefighting equipment servicer, locksmith, security provider building manager;
  - service providers such as IT provider, telephone system support, fax / photocopier service technician web designer; and/or
  - utility providers such as water, gas, electricity, landline, mobile, internet mail.

## ESSENTIAL DATA / IT / RECORDS

- Record each system / software you use (ie accounting, legal practice management, HR).
- Details on how and where client information and documents (electronic and hard copy) are stored.
- If a third party supplier is used for safe custody, or safe custody is stored off-site, details of the provider and access requirements.
- Location of archived files (electronic and hard copy) and if stored off-site, details of the provider and access requirements. It might be a good idea to include information about the practice's policy on destruction of closed files.
- Frequency of backup for each system / software.
- Do you have up-to-date (tested) back-ups? Who is responsible for maintaining and checking back-ups?
- Back up location (eg USB / portable hard drive / cloud).
- Record details of your domain registrar and host and login username. If more than one person has access note all username logins.
- Record details of all computer and voicemail login usernames.
- Who has administrator access to your system / software? Does any staff member need administrator access to your system / software for emergencies?
- Are your systems location dependent? What steps need to be implemented to be agile and either relocate to another location or enable your employees to work remotely? Consider QLS [Work from Home Protocols](#), [Cybersecurity](#) and [Video Conferencing](#).

## CRITICAL BUSINESS FUNCTIONS (MAY BE INCIDENT DEPENDENT)

- What do you **need** to work? Have you identified critical and non-critical roles and equipment? How long can you manage without any of these? (ie equipment, services staff etc.) Do you need to hire a locum, temp or virtual assistant?
- Can you maintain communication lines (to clients / staff / other practitioners / courts and services providers)?
- Do you need phone lines diverted?
- What level of business continuity do you want to maintain?
  - Do you want to be able to service your existing current matters or do you still want to take on new clients?
  - What level of supervision can you offer to staff?
- Do you have access to your current client list?
- Do you have access to your current matter list?
- Do you have staff members cross-trained in the event of incapacity or death of an employee?
- If you are a sole practitioner without staff or external support, who can step in to manage your practice should you become ill or incapacitated?
- Who is reviewing key dates for all matters during the critical incident? It is suggested you also have an alternate staff member available for this role. If dates have been lost consider whether you should make use of the Lexon HelpNow program.
- What procedure will be in place if clients or their fiduciaries require original hard copy documents on an urgent basis?
- If your office has been vacated, have you placed a notice on your door advising clients of alternative contact arrangements? Do you have a splash page on your website? Have you sent an email to current contacts?
- Do you need to put a mail redirection in place?
- Do staff know what is expected of them and what they should be communicating to external parties? Establish clear and regular lines of communication with all staff.
- Assess mental health – LawCare.
- Do you need to request extensions on matters where required?
- Do you and your staff have the resources to work remotely if needed?
- Do you need to contact your clients to discuss returning or transferring files / documents?
- What will happen to original Wills and/or Powers of Attorney stored at the office upon the incapacity or death of the principal solicitor?
- Who will complete the drafting of Wills for which the solicitor has been provided instructions but has not yet had the opportunity to prepare?
- Monitor cash flow weekly.
- Accelerate collection of fees – get money upfront in trust; send more regular smaller invoices to clients; offer numerous payment options; for slow payers be quick to establish contact and offer a payment plan.
- Reduce unnecessary expenses to build cash reserves and financial resiliency.
- Review budget, including cash flow and income projections.

## POST-INCIDENT RECOVERY CHECKLIST

You may need to consider a staged business recovery program, dependent upon staff availability, suppliers / providers and restoration of services and infrastructure.

Even if all services have been fully restored it may take some time for your practice to exit recovery mode. Some issues to consider include:

- Reconstruct financial records.
- Establish cash position.
- Ensure all tax and payroll obligations are up-to-date.
- Conduct overall damage assessment.
- Contact insurance company.
- Consider government or industry / professional assistance.
- Assess mental health – LawCare.
- Re-visit cancellations or postponements.
- Re-keying, syncing or importing data if a stand-alone system was used during the emergency.
- Ensure all Court filing, client lodgements and deliveries are completed.
- Ensure all client service standards are restored.

## Schedule 1 - Business Impact Analysis Examples

### Example 1 - Illness or absence of staff

We suggest you identify business critical staff / roles – these are the key members/roles in your practice – without them you would not be able to function.

You then need to consider a ‘succession’ plan if one of your key members is ill or absent. For firms with more than one staff member this might involve some basic cross-training and semi-regular ‘emergency drills’ where the ‘back-up’ staff member regularly carries out the essential duties of the other staff member.

However, if you are a sole practitioner without staff or external support and you become ill you need to ensure you have a contingency plan in place. Either another practitioner who can step in and manage your practice (perhaps under a reciprocal agreement) or a locum.

If you are too ill to attend to your practice and you do not have a contingency plan, you may need to contact Lexon Insurance on 07 3007 1266 to discuss their [Help Now program](#).

### Example 2 - Restrictions of movement/inability to attend the office/office has been destroyed

Circumstances may arise where you are unable to attend your office (eg COVID-19, flooding) or your office premises have been destroyed.

We recommend you consider establishing (or transitioning to) remote working capabilities. QLS has produced the following resources which may be of assistance:

- [Work from home protocols](#)
- [Guidance Statement No. 16 – Supervision](#)
- [Video Conferencing](#)
- [Cybersecurity](#)

Identify:

- Office security – if you need to vacate your office all documents should be secured as much as possible against the risks of breach of confidentiality, theft, fire, flood, vermin etc. Lexon has produced a resource for extreme weather events which can be accessed [here](#). QLS Ethics and Practice Centre have also produced [Guidance for law practices affected by flooding or extreme weather conditions](#).
- Logbooks – maintain a logbook of all file records, office records and equipment removed from the office. The logbook should record the details of the file / item removed, date, person taking the item, address where item will be stored, and provision for insertion of the date the item was returned to office. If time is critical you could provide a sheet to each staff member and ask them to complete and return it to you.
- IT and communications – Do your critical staff have access to laptops? What are your main computer applications? Are these accessible via the cloud, remote desktop or VPN (virtual private network). Can your communication system be accessed remotely? Can you divert individual desktop numbers to mobile phones? Do your key staff members have broadband internet at home or are you able to provide mobile broadband internet dongles?

### Example 3 - Damage or destruction of records (eg fire, flood, data loss)

Refer to QLS Ethics and Practice Centre [Guidance for law practices affected by flooding or extreme weather conditions](#) and Lexon’s resource for extreme weather events which can be accessed [here](#).

If the loss has occurred due to a cyber event refer to QLS Resource [First Response for law firms subjected to a cyber-incident](#).

#### Example 4 - Inability to contact or meet with clients due to illness, self-isolating or quarantine

If there is no one else suitably qualified within your practice to attend to the client's instructions you should:

- if the matter is not urgent or time sensitive, subject to the client's consent, seek a deferral of completion or an adjournment;
- contact the client, preferably by phone or other electronic means, to discuss the situation and seek release from your retainer, send an off-risk letter and offer a referral to another practitioner or the QLS Find a Solicitor service; and/or
- immediately contact Lexon Insurance on 07 3007 1266 to discuss their [Help Now program](#).