

Can I hibernate my legal practice during COVID-19 so I can self-isolate due to age or health reasons

QLS Ethics and Practice Centre (QLS Solicitor Support) has received a number of enquiries from practitioners wanting to hibernate their practices during the COVID-19 pandemic as they, or a member of their household, fall in the high risk category.

A hibernation strategy for COVID-19 has risk. A practitioner cannot simply close their doors and abandon their legal practice without first considering their ethical, legal and fiduciary duties to their clients. The *Australian Solicitors Conduct Rules 2012* (Qld) ('ASCR') states obligations we owe to our clients. A number of these are set out below. Closure and abandonment without appropriate regard to the client may be considered to be unsatisfactory professional conduct or professional misconduct.

The ASCR states in r 4 that we must:

- act in the best interests of a client in any matter in which you represents the client;¹
- deliver legal services competently, diligently and as promptly as reasonably possible.²

We are also required to follow a client's lawful, proper and competent instructions³ and must ensure the completion of legal services for a matter unless:

- the client has otherwise agreed;
- the law practice is discharged from the engagement by the client;
- the law practice terminates the engagement for just cause and on reasonable notice; or
- the engagement comes to an end by operation of law.⁴

Legal practitioners are considered essential services,⁵ which means that you cannot simply abandon your legal practice without taking appropriate steps to safeguard your client's interests. It is recommended practitioners intending to hibernate:

- Consider whether appointing a locum might be a more appropriate manner to continue the business.
- Conduct a thorough file review:
 - For matters that have been completed – has a file closing letter been sent to the client?
 - For continuing matters – review your client agreement and scope of works;
 - 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: https://www.lexoninsurance.com.au/Managing_your_risk/Help_Now
 - Consider Lexon's General – File Transfer Sender before sending files to another practitioner.
- Notify your current clients of your intentions.

¹ *Australian Solicitors Conduct Rules 2012* (Qld) r 4.1.1.

² *Ibid* r 4.1.3.

³ *Ibid* r 8.1.

⁴ *Ibid* r 13.

⁵ See [Home Confinement, Movement and Gathering Direction](#) issued under s 362B of the *Public Health Act 2005* (Qld) <https://www.qls.com.au/For_the_profession/Recently_asked_questions>.

- All funds held in trust should be returned or transferred in accordance with your client's written authority, subject to any undertakings given.
- Ensure that appropriate arrangements will be made for collection of mail, answering of phones and emails during the period of hibernation.
- Determine how your clients will obtain documents (eg. safe custody) from you during this time.
- Place a notice on your website and office premises advising of your present arrangements and providing a contact number for emergencies.
- For more information on terminating a client retainer please see [Guidance Statement No. 8 – Termination of a Retainer](#).

*If the solicitor purports to terminate for another basis which has not been agreed, it should be noted that the courts have treated the retainer as an 'entire contract', with the effect **that the solicitor may be unable to recover their fees for work performed prior to termination**.⁶ The solicitor's remuneration in such a case may be addressed in, for example, a written costs agreement. Speculative 'no win, no fee' retainers also present particular challenges.⁷*

See also [Guidance Statement No. 6 – Form of Delivery for Client Documents](#)

Lexon [General – File Transfer Sender](#)

Lexon [Contract Lawyer and Locum Risk Procedure Pack](#)

⁶ *Richard Buxton (a firm) v Mills-Owen* [2012] 4 All ER 405, 421.

⁷ *Ibid.*