

# **Appropriate Management Systems Framework**

**Practice Support**

**MARCH 2024**

# Appropriate Management Systems Framework

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## A. Introduction

### Appropriate management systems

The *Legal Profession Act 2007* (Qld) ('the Act') requires legal practitioner directors of incorporated legal practices (ILPs) and legal practitioner partners of multi-disciplinary partnerships (MDPs) to ensure that 'appropriate management systems' are implemented and maintained in their law practices.

Although the Act expressly refers to ILPs and MDPs, **all principals**<sup>1</sup> have an obligation to implement appropriate management systems to ensure that their law practice complies with all legal, regulatory, and ethical obligations.

The term 'management systems' is not meant to be limited to 'IT systems' or practice management software programs. A management system should encompass all procedures, policies, and processes to establish and run your law practice.

### 'Appropriate'

There is no universal 'right' management system, or a requirement that the management system take a particular form; the type of management system is a matter for the principal(s) of the practice to determine.

Factors to be considered by a practice in determining the appropriateness of any management systems should include the size and complexity of the practice, the legal practice area(s), external panel requirements (e.g. Legal Aid, WorkCover), the number, experience and qualifications of staff, the demographics of the clientele, and the nature of the work carried out.

An 'appropriate management system' does not necessarily mean that all processes must be documented: processes that are clearly observable, or that can be demonstrated or justified in other ways should be considered equally compliant as long as a lack of documentation does not hinder their effectiveness.

## B. The Appropriate Management Systems Framework

Historically legal practitioner directors in Queensland followed the 10 Commandments of Appropriate Management Systems outlined by the Legal Services Commissioner of NSW. Legal practitioner directors were required to demonstrate to the Legal Services Commissioner compliance with the 10 commandments in order to satisfy the legislative requirement of implementing and maintaining 'appropriate management systems'. The 10 Commandments remain a useful guide for all solicitors holding principal practising certificates. However this Appropriate Management Systems Framework may offer a more practical approach to increased regulatory requirements, demands for better client experiences, technology innovations, and the commercial pressures of running a business.

The Appropriate Management Systems Framework is underpinned by five fundamental areas of practice:

1. **Solicitor relationships**
2. **Sustainable practice**
3. **Records and matter management**
4. **Technology and innovation**
5. **Regulatory compliance**

This guide and the examples offered **should not be considered as providing definitive guidance** on the compliance of different management systems but instead merely provides practitioners with ideas and suggestions.

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<sup>1</sup> *Legal Profession Act 2007* (Qld) s 7(4) ('LP Act').

# 1. Solicitor relationships

A cursory glance of the *Australian Solicitors Conduct Rules 2012* ('ASCR') indicates the importance of solicitor relationships.

- Relations with clients
- Relations with the court
- Relations with colleagues
- Relations with staff
- Relations with the community.

The role of a solicitor is deeply entwined and embedded in relationships. The key to good relationships is quality of communications both in person and online.

Communication failings are consistently found to be a major cause of both claims and complaints against solicitors.

## 1.1. Client Communications

### 1.1.1. Intake

Processes for **verification of identity and the proper intake** of new clients to the practice, include a risk assessment, a conflict check, a check of the referral source, and specifically, client expectations (what does the client want/need as opposed to what the solicitor assumes they need).

A fundamental ethical duty is to provide 'legal services competently, diligently and as promptly as reasonably possible'.<sup>2</sup> Consider your law practice's competence and time availability to complete the work at the required level of expertise for each new client.

Delay is a primary cause of client dissatisfaction and professional negligence claims. However, delay should be contrasted with unreasonable client demands for urgent delivery of services. Appropriate boundaries and clear communications strategies are required to manage client demands and set reasonable expectations.

### 1.1.2. Conflict checks

**Conflicts of interest checks** should be conducted upon receipt of new instructions and, where necessary, throughout the file. Solicitors should remember that:

- Conflict issues may emerge during the life-cycle of a matter: what systems do you have in place to identify and address conflicts that emerge during the conduct of the matter?
- It is important not to confuse 'conflict' in the sense of 'dispute' with 'conflict of interest' in the legal sense. A serious conflict of interest can exist even though the parties are not in dispute with each other, and both desire the solicitor to keep acting.
- Conflicts can arise with former clients; between two or more clients in the same or related transaction; and / or where the solicitor's own interests or the legal practice's own interests may conflict with those of the client.

### 1.1.3. Client engagement

Procedures to ensure that **client agreements** are issued when required<sup>3</sup> addressing:

- the problem the client wants solved

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<sup>2</sup> Queensland Law Society, *Australian Solicitors Conduct Rules 2012* (at 1 June 2012) r 4.1.3 ('ASCR').

<sup>3</sup> It is recommended best practice that **all** clients receive a cost estimate and terms of engagement.

- the client's view of what a successful outcome looks like
- a clear description of the scope of work to be performed by the legal practice
- details of any work outside of the scope, steps that the client must carry out themselves and when, as well as the consequences of failure to complete those steps, an estimate of timeframes for completion of the work and on-going communication about any changes to those timeframes
- a genuine estimate of legal costs, disbursements and expenses together with details on how those legal costs will be calculated and when the client will be billed
- the staff members involved in the matter and preferred points of contact as well as systems to ensure clients are promptly updated of any staff changes affecting their matter(s)
- appropriately **documenting** client interviews, confirming in writing steps to be taken (or not taken, and the risks associated), and diarising key dates and work processes
- any unusual conditions such as security charging clauses or uplift fees
- the retention and / or safe custody of documents (i.e. wills, powers of attorney or binding financial agreements) including duration of storage, costs (if any), obligation to notify of changes to contact details etc.
- consideration of the appropriate form of communication to bring about an end of the solicitor-client relationship and to get 'off-risk', either through completion of the terms of the retainer, or when ending the retainer early

In addition to a client agreement, some matters will require formal cost disclosure – either an abbreviated form or full disclosure. There is an ongoing obligation<sup>4</sup> to disclose any substantial change to any previous estimate (disclosure) as soon as reasonably practicable. **Practitioners should refer to Chapter 3, part 3.4 of the Act and the [Costs](#) page on the QLS website for information and resources on costs disclosure and compliance.**

Continuous **management of client expectations**: identify and understand what the client wants. Ongoing, clear, and appropriate communication between solicitor and client is necessary in managing client expectations – failure to do so will often result in an unhappy client even if the outcome objectively is positive. Solicitors are reminded that **how** they communicate may vary depending on **who** is their client.

### 1.1.4. Client feedback / ongoing communications

Consideration of:

- an agreed communications plan (nature, frequency, and costs)
- a formal complaints handling system
- a survey of **client satisfaction**
- the development of client communication and service objectives and targets, such as answering phones within 5 rings, returning calls within 24 hours or confirming receipt of important instructions etc.
- additional support that may be necessary due to issues of literacy, ESL, physical or mental impairment etc
- regular review of feedback to identify strengths and weaknesses in your service and communication and to continuously improve.

Consider the impact on the value of your practice, of potential repeat or referral business from past clients, by **maintaining communications** via social media, e-newsletters, or general service announcements and identifying cross servicing opportunities.

See:

- [Care should be taken in communicating with your client](#)

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<sup>4</sup> LP Act s 315.

- [First-impressions](#)

## 1.2. Court Communications

Solicitors (and law practice staff) must not communicate with the court about any matter of substance in the absence of the other party(s). Consent should be sought from the other party(s) before communications are sent to the court and all parties must then be copied to that communication if consent is provided.

“Solicitors should be mindful of respecting the independence and integrity of the administration of justice and deal with the court formally, rather than using terms of personal familiarity with its representatives. Solicitors should avoid being alone with Judge or Magistrate from the commencement of the days hearing or application until the conclusion of the matter, except with the prior consent of one’s opponent. If the opponent grants consent, the solicitor should not raise matters with the court outside that which has been agreed.”<sup>5</sup>

See:

- [Guidance Statement No. 22 - Dealing with inappropriate judicial conduct in the courtroom](#)
- [Guidance Statement No. 25 - Professional standards when appearing in court remotely](#)
- [QLS Protocols](#) with the Supreme Court, District Court and Magistrates Court
- [Tips-for-better-advocacy](#)

## 1.3. Colleagues’ Communications

The ASCR provides specific guidance when dealing with a colleague, including the requirement to be honest and courteous, disclose obvious errors,<sup>6</sup> not to use material or information that was inadvertently disclosed,<sup>7</sup> not to make allegations of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide,<sup>8</sup> and not to communicate directly with another solicitor’s client unless the exceptions in Rule 33 apply.

See:

- [Guidance Statement No. 31 - Courtesy in communications](#) further outlines the necessity for such courtesy and how to deal with colleagues who may be discourteous in their interactions.
- [How-can-I-disengage-from-discourteous-communications?](#)
- [How-should-I-address-my-colleagues?](#)
- [Principles-of-professional-courtesy](#)
- [Recording-conversations-of-a-colleague](#)

## 1.4. Staff Communications

Principals should ensure regular staff training on expected client care standards and client communication, developing individual staff skills and expertise in all styles of communication including written, verbal, in-person and online. Consideration ought to be given to developing culturally competent and mindful practices as well as trauma-informed communication skills and systems.

There should be regular training programs for all staff to recognise unacceptable behaviours (such as bullying, discrimination and sexual harassment), processes for the reporting of these behaviours and systems for the appropriate management of these behaviours. There is a positive duty imposed upon

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<sup>5</sup> Queensland Law Society, *Australian Solicitors Conduct Rules 2012 in Practice: A Commentary for Australian Legal Practitioners* (at 15 April 2014) r 18.

<sup>6</sup> *Ibid* r 30.

<sup>7</sup> *Ibid* r 31.

<sup>8</sup> *Ibid* r 32.



employers to take reasonable and proportionate measures to eliminate, as far as possible, sexual harassment and victimisation<sup>9</sup> and psycho-social hazards.

Principals should regularly conduct file audits to ensure law practice communication standards are met and consistent across all matters.

QLS has prepared [resources](#) to help promote healthy and safe workplaces:

- sample policy templates available for a grievance policy, and for a workplace bullying, sexual harassment and discrimination policy
- LawCare
- QLS Senior Counsellors
- Employment Law Advisory Service
- Workplace Conduct Advisory Service
- Practice Advisory Service.

See:

- [Guidance Statement No. 21 – Sexual harassment in the workplace](#)
- [Guidance Statement No. 22 – Dealing with inappropriate judicial conduct in the Court](#) and respective QLS protocols for the Supreme, District and Magistrates Courts
- [The-importance-of-appropriately-communicating-staff-departures](#)

## 1.5. Community Communications

Does your practice have a social media policy? This may specify who may post on behalf of the legal practice, the type of content that should be posted, frequency of posts, forums in which content is posted, whether the account(s) will actively 'follow' or engage with other users' content and if so, what type of content, how and frequency. The policy should reinforce client confidentiality and courteous communications and provide guidance on staff promoting or referencing your law practice on their personal social media.

Do you have a reputational management strategy as a contingency plan as well as a planned response for dealing with negative on-line reviews?

See:

- [Guidance Statements No. 3 & 4 – Paying and receiving referral fees](#)
- [Guidance Statement No. 9 – Dealing with self-represented litigants](#)
- [Guidance Statement No. 24 – Ethical considerations on the use of social media and law practice websites](#)
- [Guidance Statement No. 32 – Solicitors commenting to the media](#)
- [How-do-I-deal-with-negative-online-reviews?](#)

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<sup>9</sup> Sex Discrimination Act 1984 (Cth) s 47C.

## 2. Sustainable practice

Law practices are now operating within a much broader legal industry which includes legal service providers, template providers, educators, and software and technology providers. The way legal work is performed and billed is constantly evolving.

Sustainability is concerned with:

- Futureproofing law practices to ensure they remain financially competitive and relevant within the broader market of the legal industry.
- The personal wellbeing of solicitors and law practice staff by using technology to carry out routine, repetitive and predictable tasks to provide a positive work/life balance, reduce burn out and attrition from the profession.
- The long-term future of the law practice via business continuity and succession planning to safeguard client interests and principal investments and to ensure regulatory compliance.

Some issues to consider when evaluating the sustainability of a law practice are:

### 2.1. Defined practice areas

- Is the law practice clear on the types of practice areas or the client demographic that they service?
- What are the law practices areas of competence?

### 2.2. Finance

- How was start-up capital raised?
- How is the practice funded on an on-going basis?
- Is the practice profitable?
- Is the practice meeting its periodic financial obligations?
- Does the practice have a budget and cashflow forecast?
- How is the practice capturing cost of production?

### 2.3. Billing practices

- What are the pricing practices?
- What methodology was used to determine pricing practices?
- Do different areas of practice/client demographics have different pricing options?
- What payment options are offered to clients?
- What is the practice's trading terms?
- What is the billing cycle?
- How is WIP dealt with?

### 2.4. Business development

- What is the source of client work for the practice?
- What strategies does the practice use to maintain and improve client and referral relationships?
- What is the cost of sourcing and capturing new clients?
- How are clients onboarded to the law practice?

## 2.5. Human Resources

- How does the practice recruit, retain and invest in staff?
- What professional development opportunities are offered?
- How does the practice value extra-curricular activities?
- Does the practice offer flexible hours or work from home options?
- How does the practice support those working remotely?
- Where teams do work remotely, what systems are in place to ensure the team remains connected?

## 2.6. Succession planning

- What policies and practices are in place to address critical business continuation in the event of illness, incapacity, or death of a key person within the practice?
- If a sole practitioner or sole legal practitioner director of an incorporated legal practice, does that principal have a will and a power of attorney in place to deal with the practice should something happen (accident, death, illness) to the principal? Can those documents be easily located? Who knows where those documents are?
- Has the practice developed a business exit strategy with a view to retirement, sale or closure?
- What and how does transfer of knowledge occur?
- Does the practice hold appropriate insurances for professional indemnity, public liability, personal trauma, temporary or permanent disablement or death of a key person within the practice?

## 2.7. Tech and Innovation

- What tech solutions does the law practice use for assistance with service delivery?
- What ongoing review processes exist for the revision of existing work processes and automating or streamlining workflows?
- How is new technology assessed pre-purchase/subscription? Is it one or more of the following factors: efficiency, client ease of use, cost, complexity, staff training demands, compliance, security features, word of mouth referral?
- Where is your practice on the continuum of adopting technology: beta testers/innovators - late to market?
- What skills does your team possess? Your team will need to include members who have skills to use technology to facilitate client engagements as well as team members who possess adequate “soft skills” – judgment, empathy, creativity, adaptability to communicate in order to foster service delivery.
- How is the law practice managing cyber risks?

### 3. Records and Matter Management

Records and matter management in law practices encompasses not only managing the progress of the matter from receipt of initial instructions through to completion (i.e. the client work), but also includes managing correspondence, internally delegated tasks, financial transactions, and documents for the matter. Ideally practices will implement practice-wide matter management protocols, although it may be necessary to have practice-area specific protocols. These protocols or established procedures should be regularly reviewed to ensure staff adhere to the processes, or that any evolved processes are reviewed, approved, and implemented by all staff.

A good indication of whether an appropriate records and matter management system has been implemented include:

- The status and next stage of a matter is clearly identifiable.
- The matter could be progressed by another solicitor in your absence.
- There is clear evidence of advice provided and actioned and records of the client's instructions.
- Files can be billed and transferred in a timely manner.
- The law practice's financial position is clear upon termination and a lien (if any) can be asserted and communicated to the client in a timely manner.

#### 3.1. File notes

*"A file note is a record of conversation held between the file operator and a third party, that consists of such information to permit the file operator to be in a position to refresh their memory or to permit another employee to be informed on the contents of discussion between the file operator and the third party.*

*It generally includes the date, time and location, and will include a record of what was discussed. Detail that is included within the note will vary depending on the complexity of the issues addressed, and are of importance where there is a conflict.*

*The note should be an accurate record of the conversation and advice that was rendered (if any)."*

**Stafford Shepherd, Principal Ethics and Practice Counsel, QLS.**

#### 3.2. Process management

Other key elements of a good records and matter management system will include:

- Maintaining a file register (current and archived files, person acting and person responsible)
- Incoming and outgoing mail/email handling procedure
- Workflow tracking – electronic or paper checklists
- Management of regular bring up dates together with a contingency plan in the event of a staff absence
- Management and supervision of key dates across the practice, ideally with a cross-checking process for date entry or amendments and contingency plans for staff absences, loss of services (e.g. internet) or natural disasters
- Fit-for-purpose legal practice management software
- Established document precedents and processes for regular review and updating
- File storage, retention, and destruction with appropriate client authority.

### 3.3. Security and confidentiality of records

Principals should consider the following:

- Within the office environment:
  - should access to certain records be restricted,
  - should records be kept locked,
  - are records out of sight from visitors,
  - online for digital files (administrative access controls set appropriately, cyber security protocols regularly updated),
  - when files are taken outside of the office (maintaining a log book of files removed and returned).
- Within the remote working environment or while travelling:
  - should access to certain records be restricted,
  - should records be kept locked,
  - online for digital files (administrative access controls set appropriately, cyber security protocols regularly updated),
  - ensure confidentiality is maintained if in a shared space.
- Published privacy policy and appropriate controls for handling personal client data i.e. credit cards and/or copies of driver's licence, passport etc.
- How to securely send confidential information to all relevant parties including clients, colleagues, external stakeholders, courts etc.

### 3.4. Matter management

Matters/files should be managed to ensure that if you are suddenly unable to work, a colleague can pick up the file and understand what has taken place and what is required to continue representing the client. This will include the following:

- Traceability
  - Are all documents, file notes, emails, voicemail messages, text messages, advices in relation to a matter stored in one location in a logical order (paper file, electronic folder, practice management software matter card) and the author of those records is clear.
  - Defined arrangements for the approval of correspondence sent on behalf of the practice
  - Where documents or objects (such as evidence) is stored separately from the primary file(s) a system that clearly cross-references the documents or object with the file (i.e. clear labelling and/or a register) and the file also includes a clear notation that the document/object exists and its location
  - Register of undertakings given or received, by whom and when discharged
- For electronic records – use of a practice wide (or at least practice area specific) file naming convention
- Where clients have more than one matter, separate file records are maintained for each matter
- Version control/history of documents is retained
- Safe custody register and storage (N.B. obligation to maintain a register of powers and estates)<sup>10</sup>
- Safe and secure archive storage facility with protocols around who may access files, and how the movement of archived files are tracked and returned.
- Regular file and system back-ups of date – back-up regularly tested
- Adequate supervision of staff
- Proper delegation of work to staff
- Frequent and random file reviews.

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<sup>10</sup> *Legal Profession Regulation 2017* (Qld) s 57.

See also:

- [ASCR r 16 – Charging for storage of documents](#)
- [Guidance Statement No. 6 – Form of delivery for client documents](#)
- [ASCR r 6 - Undertakings](#)
- [Guidance Statement No.1 - Undertakings](#)
- [How can I keep track of my undertakings?](#)
- [Undertakings – Factsheet and Checklist](#)

### 3.5. Staff Supervision and delegation

Matter management includes proactive oversight of the delivery of the legal content, file management and communication by all staff. Law practices should have clear supervisory arrangements in place and ensure staff have regular access to their supervisors.

An open-door policy by itself is rarely an effective supervision strategy. It should be supplemented with proactive supervision strategies such as regular one-on-one and team meetings, file reviews and management reports.

Measuring and managing the volume of work for each staff member is an essential component of managing the delivery of legal services and should be considered prior to accepting instructions and monitored throughout the duration of the client's instructions.

The recruitment process should consist of appropriate background checks, including police checks, reference checking, searches of disciplinary records and disclosure of claims history. Clear job descriptions prior to advertising positions can ensure the recruitment of appropriately qualified staff. Law practices should have clear induction programs for all new staff. Consideration should be given to the need for temporary staff or locum solicitors. Ideally the law practice should have developed a relationship with a locum either in their region, or specific practice area.

Use of workflows, matter plans, checklists, reminder or bring up systems and key/critical date calendars are critical records in a law practice. Law practices should have contingency plans in place in the event a file author is absent from the office. Those contingency plans should be regularly reviewed and tested to ensure they are effective. Regular file audits may reveal if the law practice's processes are not being followed and may prompt a more thorough review of staff work.

Critical tools to prevent delay and to monitor the progress of work include:

- running management reports for inactive matters
- checking if significant time or work has accrued but remains unbilled or has been written off
- regular team meetings for file updates (as a supplement to one-on-one meetings)
- regular discussions of workloads and upcoming file events

If problems or failings are identified it is important to ascertain the cause(s) and implement change.

Notwithstanding date systems and reporting, individual wellbeing and procrastination may affect productivity or cause errors or omissions. It is important to identify when wellbeing may be causing delay and consider re-allocating files, closer supervision on files, or consider whether the client should be referred to an alternate law practice.

Principals should also seek out mentors and peer support for their own professional development. This may include additional training on supervising and mentoring staff, as well as legal professional development.

### 3.6. Undertakings

Special mention should be made of undertakings and the supervision of undertaking within a law practice. Honouring an undertaking given by a solicitor (as opposed to a client) is a fundamental ethical obligation of a solicitor. Dishonouring an undertaking may lead to contempt of court proceedings; disciplinary proceedings; and/or breach of contract. It is important that your law practice

has a method of recording all undertakings provided by solicitors employed in the practice and perhaps a policy on who may provide undertakings, and in what circumstances. Maintaining a register of undertakings given and the date each is discharged may be of assistance, particularly if a staff member is suddenly ill or absent.

Training on understanding the obligations imposed when providing an undertaking, and identifying when an undertaking is being requested should be included when on-boarding new staff. Refresher training should be provided annually for all staff.

### 3.7. Rule 37 ASCR

This Rule states that 'a solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of the legal services for that matter'.<sup>11</sup> "Reasonable supervision" is not defined in the ASCR but there are several resources that may assist:

- [Guidance Statement No. 16 Supervision](#)
- [Checklist-Supervision-of-Practice-and-Staff-Checklist](#)
- [The-importance-of-effective-supervision](#)
- [Paralegals](#)
- [Rule 37 Commentary](#)

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<sup>11</sup> ASCR (n 2) r 37.



## 4. Technology and Innovation

The legal services landscape is likely to change quickly as new technologies mature. The challenge for solicitors is to be able to assess the risks and benefits of relevant technology and innovations to determine what value it provides to the practice or clients. Not every shiny new toy will live up to the sales hype, but in a changing environment, inaction is a significant risk too. Even if you don't think immediate change is required you should keep an eye two steps down the road to ensure you are not caught off guard. New technology may open up new areas of business or expose you to new competitors. Taking advantage of emerging tools may require significant workplace adaption to ensure the full benefit is achieved. This might be as little as a bit of extra training or as much as a whole new business model.

The [2021 Innovation Committee Report](#) outlines some of the skills and new ways of thinking that an evolving landscape may require. At the very least, keep the possibility of rapid technological change in mind when updating your business plans and SWOT analysis.<sup>12</sup>

It is important to remember the obligation is to implement **appropriate** management systems<sup>13</sup> rather than simply implementing the latest technology to keep in line with current trends. Successful use of technology in legal practice may be unique to each practice. This needs a more analytical assessment of the proposed technology/innovation. Issues to consider:

- Will this technology / innovation solve a particular issue?
- Will your practice / staff be more efficient and productive?
- What is needed to ensure you have the staff, work and expertise to capitalise on the full potential of a system?
- Will this technology / innovation be secure and enhance the law practice's data and document security?
- Does this technology / innovation allow you to focus on more strategic advice or value adds for clients?
- Can this technology / innovation reduce errors, increase risk management capabilities?
- Will this technology / innovation assist in meeting compliance obligations (ie document changes are traceable and trackable automatically)?
- Can this technology / innovation improve work / life balance?

It would be prudent to seek advice from an appropriately qualified technology consultant on suitable technology for your practice needs, appropriate software selection and implementation. When purchasing software, be very careful to differentiate between what it *can* do and what it *will* do straight out of the box. Many tools with "AI" components (and many without) need extensive implementation and training before their potential can be reached.

For assistance in selecting and using cloud based tools see the [QLS Reference Guide: Choosing and using cloud services](#).

### Essential basic legal practice tools

- Email and email management tools
- Internal communication platform
- Website for both business development and business management (i.e. onboarding new clients, client booking systems)
- Client / potential client record manager ("CRM")
- Matter manager
- Task manager

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<sup>12</sup> SWOT (Strengths, Weaknesses, Opportunities, Threats) is a useful management tool to assess where your current strengths lie and where improvement resources need to be deployed.

<sup>13</sup> *LP Act* (n 1) s 117.



- Calendar
- Document processor & document automation/assembly
- Secure cloud storage
- Scanner
- Document management
- Time tracking, billing and accounting software
- Trust accounting
- eDiscovery tools
- eBrief creation
- Legal research
- E-signing platform
- Video conferencing
- Online payments
- Password manager and vault
- Data backups
- Social Media
- E-Settlement software subscription
- Remote management functions for lost devices or those in possession of former staff.

Many of these functions may be found in an “all-in-one” legal practice management software program. Every user requires a separate subscription, and when selecting the platform assess the cost of supplying your future needs, not just your immediate requirements. Refer to the [Practice Management Software Checklist](#).

Carefully consider the terms of any legal practice management software program including:

- length of term of the agreement, options to extend, notice periods;
- data storage including location of storage, security, access, and redundancy arrangements;
- changes to service terms, conditions, inclusions;
- cost of keeping your records for 7 years or longer;
- options and cost of removing or transferring your records elsewhere;
- access to data after the conclusion of the agreement and the cost of doing so.

There are a number of resources for solicitors on the QLS website, through reports and working papers of the QLS Innovation Committee and through the Practice Advisory Service.

## 5. Regulatory Compliance

It is important that principals understand the rules, legislation and regulations that apply to their law practice (and the discrete areas of law practiced within it). The obligation is on the principal to develop processes to ensure compliance and to educate staff and monitor ongoing compliance.

The *Australian Solicitors Conduct Rules 2012* ('ASCR') indicates the importance of compliance. It is a fundamental ethical duty to comply with the Rules and the law.<sup>14</sup>

Regulatory compliance for law practices includes, but is not limited to, the following:

- compliance with the ASCR
- costs and ongoing costs disclosure
- solicitor trust account compliance
- tax compliance – BAS, GST, PAYG, PAYE, FB
- superannuation guarantee compliance
- payroll compliance
- workplace conduct
- practising certificates
- maintaining appropriate professional indemnity insurance (including top-up cover if required)
- ensuring compliance with the Professional Standards Scheme
- practice area specific compliance.

### 5.1. Ethical Guidance

The QLS Ethics and Practice Centre (the Centre) provides legal ethics and practice support guidance to QLS members. Even if the ethical issue relates to a sensitive matter, solicitors are permitted to seek guidance under the ASCR (see **Rule 9.2.3**). All communications with the Centre are strictly confidential except in certain cases eg: dealing with the reporting of certain irregularities or suspected irregularities in the administration of trust accounts or mandatory reporting obligations of child sexual offences under s 229BC of the *Criminal Code Act 1899* (Qld).

### 5.2. Costs agreements and disclosure

Part 3.4 of the *LP Act* is the primary Part of the Act dealing with costs agreements,<sup>15</sup> costs disclosure<sup>16</sup>, ongoing costs disclosure<sup>17</sup> and costs assessment.<sup>18</sup>

The distinction between a client retainer and a costs agreement is an important one. A **client retainer** does many things. It is the essential contract between solicitor and client. It defines the scope of the work, sets out the terms of undertaking that work, and the terms of the solicitor's authority as agent in any given matter.

A **costs agreement** does one thing. It is a written agreement that secures a solicitor's right to payment on a contractual basis, pursuant to one or more retainers. Care should be taken to ensure the costs agreement proposed captures the retainer or retainers which relate to those instructions. The costs agreement can cater for prospective retainers. A costs agreement is a creature of statute that arises when a compliant offer is made and then accepted (save for a conditional costs agreement).

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<sup>14</sup> ASCR (n 2) r 4.1.5.

<sup>15</sup> *LP Act*, Part 3.4, Div 5.

<sup>16</sup> *LP Act*, Part 3.4, Div 3.

<sup>17</sup> *LP Act*, s 315.

<sup>18</sup> *LP Act*, Part 3.4, Div 7.

There is an obligation on practitioners to make costs disclosure unless the exceptions listed in s311 LP Act apply.

Where the legal costs (exclusive of GST and disbursements) will not exceed \$3000, abbreviated disclosure may be made in accordance with s307B or s309 LP Act.

In all other cases, disclosure must be made in accordance with s308 or 309(1) LP Act.

There is a further obligation on practitioners to make ongoing costs disclosure of any substantial changes to anything included in a disclosure already made (i.e., a change of solicitor handling the file, a change of fee rates, or an updated fee estimate).

Practitioners should refer to the resources available on the [Costs page](#) of the QLS website.

### 5.3. Solicitor Trust Account compliance

Trust accounting is a particular form of bookkeeping used exclusively for trust transactions. Trust money is defined in the Act as follows:

*trust money* means money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, and includes—

- (a) money received by the practice on account of legal costs in advance of providing the services; and
- (b) controlled money received by the practice; and
- (c) transit money received by the practice; and
- (d) money received by the practice that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for another person.<sup>19</sup>

Even if your law practice does not operate a trust account it is important to know and understand your obligations under the relevant rules, regulations, and legislation as you may be required to maintain a Register of Powers and Estates and records in relation to transit money and power money transactions.

Use of an electronic trust account software package will not absolve the principal of responsibility for errors in record keeping and accounting procedures. Nor will engaging a bookkeeper. The obligation remains on the principal for oversight of the trust account. The principal must ensure the accounting records are compliant, accurate, up to date and regularly monitored.

Trust account compliance includes, but is not limited to:

- selecting a suitable accounting software package with appropriate user administration rights
- specific delegations and procedures for the handling of trust monies, especially the receipting of trust funds and the issuing of trust account cheques or EFT payments
- promptly notifying QLS of changes or updates to the authorised signatories on the account as staff leave or commence employment with the law practice
- training for all staff on trust accounting procedures, the ramifications of errors, and reporting obligations
- defined procedures in relation to the receipting of cheques, the use of accounts ledgers, completing deposit slips, banking requirements etc.
- procedures in relation to anti-money laundering legislation.

For more information on trust accounting, solicitors are encouraged to refer to the [trust accounting resources](#) on the QLS website, or contact the QLS Trust Accounts Team on **07 3842 5845** or [managertai@qls.com.au](mailto:managertai@qls.com.au).

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<sup>19</sup> LP Act (n 1) s 237(1).

## 5.4. Tax compliance – BAS, GST, PAYG, PAYE, FB

Every law practice should have a working relationship with an accountant or tax adviser and schedule regular compliance reviews.

In addition to annual income tax return lodgements, most practices will lodge business activity statements, PAYG withholding annual reports, fringe benefits tax return and a GST return (usually quarterly or annually).

It is important to understand your taxation obligations. Practices that are not registered for GST should ensure that their bills are issued as an invoice, as opposed to a tax invoice.

Failing to lodge business activity statements on time, or failure to pay monies owing (including penalties, interest, or charges) to the ATO in accordance with a business activity statement, might be a 'suitability matter'<sup>20</sup> to be taken into account when determining whether a solicitor is fit and proper to hold a practising certificate.<sup>21</sup>

## 5.5. Superannuation guarantee compliance

The superannuation guarantee is the minimum amount payable to avoid a superannuation guarantee charge. The super guarantee is a percentage of ordinary time earnings that an employer must pay into a superannuation fund for their employee.

Failure to pay the superannuation guarantee by the due date (generally quarterly), or to the correct superannuation fund, may trigger a liability to pay a superannuation guarantee charge. The superannuation guarantee charge is not tax deductible.

A failure to comply with the superannuation guarantee obligations might be a 'suitability matter'<sup>22</sup> to be considered when determining whether a person is fit and proper to hold a practising certificate.<sup>23</sup>

## 5.6. Payroll compliance

Payroll compliance is more than simply paying your employees regularly. It also includes:

- hiring and onboarding processes
- off-boarding of an employee through resignation, retirement, or termination
- salary entitlements
- leave entitlements
- allowances, overtime and penalty rates
- work arrangements (including flexible work arrangements)
- provision of pay slips and general record keeping
- provision of the Fair Work Information Statement.

## 5.7. Workplace conduct

In addition to payroll requirements, employers must maintain a safe work environment which includes both physical and psychological health.<sup>24</sup>

- QLS has sample policy templates available for a grievance policy, and for a workplace bullying, sexual harassment, and discrimination policy.

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<sup>20</sup> Ibid ss 9, 46.

<sup>21</sup> Ibid ss 51(4)(b), 51(5)(b); *Council of the Law Society of NSW v Wehbe* [2018] NSWCATOD 14; *Purdie v Queensland Law Society* [2021] QCAT 291.

<sup>22</sup> *LP Act* (n 1) ss 9, 46.

<sup>23</sup> Ibid ss 51(4)(b), 51(5)(b); *Council of the Law Society of New South Wales v Rodgers* [2021] NSWCATOD 124.

<sup>24</sup> Managing the risk of psychosocial hazards at work Code of Practice 2022, WHSQ.

- QLS has prepared resources and has services to help promote healthy and safe workplaces:
  - Diversity and inclusion in the workplace
  - Guidance Statement No. 21 – Sexual harassment in the workplace
  - Guidance Statement No. 22 – Dealing with inappropriate judicial conduct in the Court and respective QLS protocols for the Supreme, District and Magistrates Courts
  - QLS Workshops / Professional development sessions
  - LawCare
  - QLS Senior Counsellors
  - Employment Law Advisory Service
  - Workplace Conduct Advisory Service
  - QLS Solicitor Support.

## 5.8. Practising Certificates and practising obligations

A solicitor's practising certificate is required to practice as a solicitor in Queensland.<sup>25</sup>

The practising certificate may be subject to statutory conditions or discretionary conditions.

Practising certificates may be restricted or unrestricted.

Restricted certificates issue to solicitors who have not yet completed their period of supervised legal practice.<sup>26</sup>

Principal practising certificates are issued to principals of law practices who are required to have satisfied the requirements of the practice management course and hold professional indemnity insurance in accordance with the Indemnity Rule.

Principals are obliged to ensure their staff hold the appropriate practising certificate.

It is important that the title designated to employed solicitors (and support staff) is not misleading or likely to mislead.<sup>27</sup>

Solicitors in Queensland are required to complete at least 10 continuing professional development points each year,<sup>28</sup> and Accredited Specialists are required to complete 15 points. QLS Mediators are required to have conducted a prescribed minimum number of hours of mediation, co-mediation or conciliation within a 2 year period and met the CPD requirements prescribed by the National Mediator Accreditation System.

Solicitors have ongoing disclosure obligations as to suitability matters for obtaining and retaining a practising certificate, which may include any matter which does or might reflect negatively on your honesty, candour, respect for the law or ability to meet professional standards. The timeframe for disclosing such matters to QLS will depend on the nature of the issue.

**Principals should be mindful that they may not employ a disqualified lay associate without the consent of the QLS.<sup>29</sup>**

## 5.9. Professional Indemnity Insurance

Every law practice in Queensland must hold professional indemnity insurance. The captive insurer for the legal profession in Qld is Lexon Insurance. Failure to comply with individual solicitor's practising certificate conditions etc. referred to in clause 6.7 may also impact on the law practice's insurance.

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<sup>25</sup> *LP Act* (n 1) s 24. There are exceptions set out in s 24(3) of the *LP Act*.

<sup>26</sup> *LP Act* (n 1) s 56; see also *Queensland Law Society Administration Rule 2005* (Qld) rr 7 – 9, 11-12.

<sup>27</sup> *ASCR* (n 2) r 36.1.2.

<sup>28</sup> *Queensland Law Society Administration Rule 2005*, r 47.

<sup>29</sup> *LP Act* (n 1) s 26.

Further information should be sought directly from Lexon Insurance about whether you are exempt from the scheme. See [www.lexoninsurance.com.au](http://www.lexoninsurance.com.au).

## 5.10. Lexon's Enhanced Management Review Program

The Enhanced Management Review program is available to law practices insured by Lexon Insurance. By agreeing to comply with the terms of the program a participating law practice may obtain a 15% discount of the insurance base levy (up to a maximum of \$40,000).

Further information about the program and obligations of subscribers should be directed to Lexon Insurance: See [www.lexoninsurance.com.au](http://www.lexoninsurance.com.au).

## 5.11. Professional Standards Scheme

QLS operates a Professional Standards Scheme for full and honorary members in legal practice (it does not include corporate or government practising certificate holders). The scheme limits the liability of participating members and their law practices for damages arising out of the provision of legal services (please see the guidance document for a list of exemptions).

There is a cap on liability which depends on the size of the law practice.

It is important to note the distinction between law firms (sole practitioners and partnerships) and incorporated legal practices and multi-disciplinary practices and the different requirements in order to participate in the scheme.

For law firms to obtain the benefit of the scheme **all** eligible solicitors employed by the law practice must be full members or honorary members of QLS and participate in the scheme.<sup>30</sup> An annual fee is payable in addition to the membership fee and practising certificate fee. The principal and the law practice must hold compliant professional indemnity insurance and ensure it has met its disclosure obligations under s 34 of the *Professional Standards Act 2004* (Qld).

For incorporated legal practices, the ILP must hold ILP membership of the Society and participate in the Scheme. Additionally, all solicitors employed by the ILP must be full or honorary members of QLS and participate in the scheme.

For multi-disciplinary practices, all solicitors employed in the legal practice of the MDP must be full or honorary members of QLS and participate in the scheme.

For more information please refer to the Professional Standards Scheme information on the QLS website: <https://www.qls.com.au/About-us/Services-and-benefits/Business-Services/Professional-Standards-Scheme>.

## 5.12. Practice Area Specific Compliance

Principals need to be aware of specific practice area compliance obligations, even if other solicitors within the practice have the carriage and conduct of the matters, and it is not the principal's primary practice area.

Some examples of specific practice area compliance obligations may be illustrated in a residential conveyancing file:

- The Land Titles Office imposes a Verification of Identity Standard on witnessing officers for particular transactions.

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<sup>30</sup> Scheme participation for eligible full and ILP members is automatic upon being granted or renewing membership unless the member applies for and is granted an exemption. Honorary members with practising certificates are regarded as participating in the Scheme unless they are exempted.

- Lexon Insurance has developed a conveyancing protocol and a cyber protocol for insured practices, where a claim arises and there has been a failure to make a bona fide endeavour to use and comply with the protocol a deterrent excess may be imposed.
- The Queensland Revenue Office requires self-assessors to retain all information used in assessing a person's transfer duty for a minimum period of 5 years.<sup>31</sup>

Another example is the *Personal Injuries Proceedings Act 2002* (PIPA) which restricts the advertising of personal injury services.

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<sup>31</sup> Queensland Revenue Office, 'Obligations for transfer duty self-assessors', Queensland Government (27 September 2023).