

# Guidelines for Matter Management Screening Guidance

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Law  Mutual (WA)®



# This Guidance

This Guidance contains knowledge about widely accepted good practice in the delivery of legal services. It follows Law Mutual's Guidelines for matter management. It provides general guidance on screening the prospective client and matter in order to reach an in principle decision to accept or decline the client's request to act on their behalf in the conduct of the legal matter. It incorporates certain requirements of the *Legal Profession Act 2008 (WA)*.

## Matter:

<b>All Phases</b>	<ul style="list-style-type: none"><li>• Take notes and communicate</li><li>• Comply with time and other requirements</li><li>• Supervise and review</li></ul>
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## Management comprises the following core elements:

<b>Screen</b>	<ul style="list-style-type: none"><li>• Identify &amp; screen client</li><li>• Consider risks</li><li>• Manage conflicts</li></ul>
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<b>Engage</b>	<ul style="list-style-type: none"><li>• Scope work</li><li>• Understand client needs</li><li>• Agree terms</li></ul>
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<b>Provide</b>	<ul style="list-style-type: none"><li>• Manage deadlines</li><li>• Manage service quality</li><li>• Manage client expectations</li></ul>
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<b>Complete</b>	<ul style="list-style-type: none"><li>• Manage close out</li><li>• Manage transfer</li></ul>
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# Screening

The purpose of screening the prospective client and matter is to reach a decision in principle to accept or reject a matter. It is a critical phase in matter management, where decisions are made that lock the practice and potential client into the conduct of the matter. The practice's desire to secure new clients and generate fees must be tempered by a realistic understanding of the suitability of the potential client, the nature and complexity of the legal need and the practice's capability and capacity to undertake the work.

Practices too often accept matters without appropriate due diligence to later learn that the practice and client would have been better served had the matter been declined. This can result in professional conduct claims against the practitioner, fee disputes and professional liability action, sometimes despite the quality of the legal services provided. Establishing effective client screening techniques is therefore one of the most important ways to reduce the risk of professional liability claims.

Screening involves the following distinct steps, some of which may be taken concurrently.

Confirm identity and authority	Understand nature of legal need	Check for conflict of interest	Determine suitability of client	Determine capability to conduct matter	Manage initial client expectations	Decide to accept or reject matter
Be certain of the prospective client's identity and authority to instruct you	Take sufficient initial instructions to understand the facts, the legal issues to be addressed and the overall approach to conducting the matter	Determine whether the practice has any potential conflict of interest and if so, either decline the instruction or manage the conflict in a legally permissible manner	Conduct relevant enquiries and searches to assure the practice of the potential client's capacity and suitability	Determine whether the practice has the capability and appetite to conduct any matter that is high risk, complex or unusual	Ensure the client understands the practice's capability to act on the client's behalf	Consider key risks identified during screening, decide whether to take on matter and communicate to the prospective client

# Confirm identity and authority

The purpose of this phase is for the Practice to reach an in principle decision to accept or decline the client's request to act on their behalf in the conduct of the legal matter.

Area	Description
Requirement	Be certain of the prospective client's identity and authority to instruct you
Risk considerations	<p>The key risks to be considered in establishing the identity and authority of the prospective client are:</p> <ul style="list-style-type: none"> <li>• the person you are talking to not being who he says he is</li> <li>• the person you are talking to incorrectly describing the client he purports to represent</li> <li>• engaging with the wrong client due to complexity of client's corporate and ownership structure</li> <li>• the person you are talking to not having the authority to instruct you on behalf of the client or other 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)</li> </ul>
Must do's	<p>The "must do's" for establishing the identity and authority of the prospective client are:</p> <ul style="list-style-type: none"> <li>• where you are acting for more than one client, (e.g. family members) meet or at a minimum communicate with each potential client</li> <li>• confirm the legal identity of each potential client</li> <li>• 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 practice is not providing advice to them</li> <li>• communicate to the client(s) that the engagement agreement must provide for clear authorities such as:               <ul style="list-style-type: none"> <li>o where you are acting for a corporate body or business the engagement agreement must be appropriately authorised by the company or business owners</li> <li>o where you are acting for more than one client the engagement agreement must be signed by all clients and provision made on how advice is to be given and instructions received from each client (e.g. via an authorised representative)</li> </ul> </li> </ul>
How to's	<ul style="list-style-type: none"> <li>• 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)</li> <li>• Relevant enquiries include sighting/copying of a driver's licence or passport; conducting a title search or corporate structure search</li> <li>• Check all prospective clients where instructions are given by one prospective client on behalf of other clients in a joint matter</li> <li>• All clients in a joint matter, regardless of who has given instructions, should consent to instructions</li> </ul>
Potential controls	Client identity confirmation checklist
Capability	A senior practitioner should have accountability for ensuring the prospective client's identity and authority is fully understood and confirmed
Supervision	Consider key risks in conducting the matter against the Practice's risk appetite
	A senior practitioner should supervise the conduct of and check the outcomes of relevant searches where this is delegated to junior practitioners

# Understand nature of the legal need

The purpose of this phase is for the Practice and the client to reach a shared understanding and binding agreement on the scope, fees, disbursements and services associated with the conduct of the Legal Matter.

Area	Description
Requirement	Take sufficient instructions to understand the facts, the legal issues to be addressed and the overall approach to conducting the matter
Risk considerations	<p>The key risks to be considered in understanding the nature of the legal need are:</p> <ul style="list-style-type: none"> <li>• making a decision to take on a matter without a full understanding of its facts and issues</li> <li>• giving preliminary advice based on insufficient understanding of facts or issues, prejudicing the client</li> <li>• accepting the matter without having identified an imminent and critical deadline</li> <li>• breach of <i>Legal Profession Conduct Rules 2010 (WA)</i> if the matter is beyond the competence of practitioner or if the client's lawful, proper and competent instructions have not been followed</li> </ul>
Must do's	<p>The "must do's" for understanding the nature of the legal need are:</p> <ul style="list-style-type: none"> <li>• ensure the prospective client has adequately communicated material facts to inform preliminary analysis of the legal issues</li> <li>• confirm the prospective client's objectives and requirements for the conduct and resolution of the matter</li> <li>• review key documentation that is necessary to understand the matter</li> </ul>
How to's	<ul style="list-style-type: none"> <li>• 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</li> <li>• Question the prospective client to ensure there is an adequate disclosure of material facts</li> <li>• Be wary of the prospective client who believes he knows the legal answers and rushes to tell you before disclosing all of the facts</li> <li>• Do not overrely on prospective client's understanding of key facts e.g. defendant identity</li> <li>• Request supporting documentation where appropriate</li> <li>• 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</li> <li>• Consider whether a senior practitioner should attend the initial meeting</li> </ul>
Potential controls	<ul style="list-style-type: none"> <li>• Standard instruction form with prompts to capture the nature of the legal need</li> </ul>
Capability	A senior practitioner should have accountability for ensuring there is a correct understanding of the nature of the legal need
Supervision	A senior practitioner should review the completed instruction form where initial instructions are taken by more junior practitioners

# Check for conflict of interest

Area	Description
Requirement	Determine whether the practice has any potential conflict of interest and if so, either decline the instructions or manage the potential conflict in a legally permissible manner
Risk considerations	<p>The key conflict of interest risks to be considered are:</p> <ul style="list-style-type: none"> <li>• acting in a situation of conflict such as:               <ul style="list-style-type: none"> <li>o current client v former client or another current client</li> <li>o current client v lawyer/law practice</li> <li>o current client v duty to the court</li> <li>o lawyer/law practice v duty to the court</li> </ul> </li> <li>• acting for 'a group' where members of the group have potentially different interests</li> <li>• 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 inpractice relative, friend or neighbour with instructions to create will or power of attorney)</li> </ul>
Must do's	<p>The "must do's" for managing the potential for conflict of interest are:</p> <ul style="list-style-type: none"> <li>• 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/subject matter</li> <li>• check the names of directors/relevant shareholders/associated entities of the client</li> <li>• when taking instructions identify any related party and determine whether the client a conflicted agent for that related party, and whether the related party is unrepresented and might reasonably rely on the practice's advice</li> <li>• check there is no conflict with former or current clients or practitioners/personnel in the practice</li> <li>• a requirement or mechanism that no file can be opened until conflicts check completed</li> <li>• undertake ongoing checks throughout the conduct of matter to ensure no new conflict emerges</li> <li>• Where a potential conflict exists, determine whether it can be managed in a manner permissible under the Legal Profession Conduct Rules 2010, the Legal Profession Act 2008, common law and equity</li> <li>• if the potential conflict cannot be managed in a legally permissible manner, decline the instructions</li> <li>• if the potential conflict can be managed in a legally permissible manner, take, document and monitor actions to manage the potential conflict</li> </ul>
How to's	<ul style="list-style-type: none"> <li>• While a comprehensive conflicts record provides a sound foundation, identifying all related parties and potential conflicts of interest requires legal understanding. 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.</li> <li>• Practices should carefully consider the risk of a conflict before accepting "red flag instructions" that are highly likely to create a conflict</li> <li>• 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 practice)</li> <li>• Larger practices should formalise an approach to manage conflicts to avoid issues between two partners both desiring to take on conflicted clients</li> <li>• Post engagement, practices should check for new conflicts whenever changes to circumstances arise</li> </ul>
Potential controls	<ul style="list-style-type: none"> <li>• Conflicts database</li> <li>• Requirements for update of conflicts database i.e. what information, who must input it and when</li> <li>• Conflict checking, management and escalation procedure, including checklist to prompt consideration of all types of conflicts and listing "red flag instructions"</li> </ul>
Capability	<ul style="list-style-type: none"> <li>• For each new enquiry or matter the accountable partner should have responsibility for conflict checking and management</li> <li>• In larger practices, the managing partner(s) should have responsibility for resolving any potential conflict issue between partners</li> </ul>

# Determine capacity and suitability of the client

Activity	Requirement
Requirement	Conduct relevant enquiries and searches to assure the practice of the potential client's capacity and suitability
Risk considerations	<p>The key risks associated with accepting unsuitable clients are:</p> <ul style="list-style-type: none"> <li>• the client has unlawful or unethical intentions</li> <li>• the client has difficulty paying legal fees and/or disputes value of work performed</li> <li>• the client has unreasonable expectation and holds the practice responsible when expectations are not met</li> <li>• a "difficult" client exacts emotional toll on staff and/or requires significant non-chargeable hours to manage</li> <li>• the client is legally incapable of giving instructions (e.g. mental capacity, insolvent corporate bodies and deadlocked corporate bodies)</li> </ul>
Must do's	<p>The "must do's" for determining the suitability of a prospective client are:</p> <ul style="list-style-type: none"> <li>• make sufficient enquiries to identify risks</li> <li>• conduct sufficient searches, including financial checks and involvement in previous litigation, to identify risks</li> <li>• ensure that risks are adequately considered before the practice accepts a potential client</li> <li>• where an initial meeting is not conducted by the senior practitioner, ensure there is enough information for the senior practitioner to exercise judgment regarding the suitability of and risks associated with accepting the potential client</li> <li>• where the practice decides to accept a client despite risks, consider further measures to manage the client and protect the practice</li> </ul>
How to's	<p>Practices should develop a list of risk indicators to assist in the identification of high risk clients. Risk indicators include:</p> <ul style="list-style-type: none"> <li>• financial difficulties</li> <li>• instructed other lawyers previously on the matter</li> <li>• overbearing, high conflict, or highly litigious</li> <li>• armed by knowledge gleaned from internet and/or lots of documentation</li> <li>• unrealistic expectations as to outcome, time or fees</li> <li>• highly critical of lawyers or other experts</li> <li>• unwilling to place money on trust</li> <li>• motivated primarily by emotions, revenge or need to prove a point or principle</li> </ul> <p>Further measures to manage the client and protect the practice might include:</p> <ul style="list-style-type: none"> <li>• special requirements regarding money on trust</li> <li>• special conditions in the contract of engagement</li> <li>• assigning a more senior lawyer to manage the relationship</li> </ul> <p>Practices can further protect themselves by actively developing a culture that encourages junior and mid-level lawyers to quickly elevate issues, including issues that arise in client relationships</p>
Potential controls	<ul style="list-style-type: none"> <li>• Standard instruction form that includes               <ul style="list-style-type: none"> <li>o risk indicator checklist and/or prompts for capturing risk related information</li> <li>o sign off procedure by accountable senior practitioner</li> </ul> </li> <li>• Client credit checking procedure</li> </ul>
Capability	A senior practitioner should have accountability for ensuring suitability of the client and conducting relevant background checks
Supervision	A senior practitioner should oversee the conduct of and check the outcomes of relevant background checks

# Determine capability and appetite to conduct matter

Activity	Requirement
Requirement	Determine whether the practice has the capability and appetite to conduct any matter that is high risk, complex or unusual
Risk considerations	<p>The key risks to be considered in determining capability and appetite to conduct the matter are:</p> <ul style="list-style-type: none"> <li>• breach of Legal Profession Conduct Rules 2010 (WA) if the matter is beyond competence of practitioner</li> <li>• poor service outcome due to inadequate resources (financial, staff capability and capacity and time) to conduct the matter</li> </ul>
Must do's	<p>The “must do’s” for determining capability and appetite to conduct the matter are:</p> <ul style="list-style-type: none"> <li>• decide whether the practice can adequately offer representation, and has sufficient resources and competence to deal with the matter</li> <li>• determine whether additional resources are required outside the practice and if so the implications in accepting the matter</li> <li>• determine whether the type of matter is within the appetite of the practice</li> </ul>
How to's	<ul style="list-style-type: none"> <li>• The practice should be clear on the types of matters it will and will not accept and capture this in a guideline on practice risk appetite</li> <li>• Risk appetite includes factors such as the practice area, complexity of matter, jurisdiction, third party requirement, limitation date or other critical deadlines</li> <li>• Junior practitioners should be encouraged to raise concerns about risks and issues with senior practitioners</li> </ul>
Potential controls	<ul style="list-style-type: none"> <li>• Risk appetite statement that sets limits on the work the practice is prepared to take</li> <li>• Mandatory signing off by accountable senior practitioner</li> </ul>
Capability	A senior practitioner should have accountability for determining practice capability and appetite to conduct the matter having regard to initial instructions
Supervision	A senior practitioner should engage junior practitioners on determining the practice's capability and appetite to take on a matter but make the decision

## Manage initial client expectations

Activity	Requirement
Requirement	Ensure the client understands the practice's capability (and limits) to act on the client's behalf
Risk considerations	<p>The key risks to be considered in communicating the practice's approach and practice capability are:</p> <ul style="list-style-type: none"> <li>the client misunderstands practice's capability and approach and holds practitioner responsible when expectations as to outcomes, costs, timing or service levels are not met</li> <li>the client assumes practitioner is acting for client in or immediately following initial meeting when this is not the practice's intention</li> </ul>
Must do's	<p>The "must do's" for communicating approach and capability are:</p> <ul style="list-style-type: none"> <li>ensure that the potential client understands what is being communicated through clear language that is appropriate for the potential client</li> <li>explain how the matter will be conducted with indicative actions, time frames and costs</li> <li>explain what is required from potential client, and when, in order to meet these time frames</li> <li>explain practice resources and capability to act</li> <li>confirm key points in writing following verbal communication</li> <li>ensure the potential client understands that the practice is not acting until the formal engagement offer has been accepted</li> </ul>
How to's	<ul style="list-style-type: none"> <li>The practitioner should adopt language and means of communication based on factors such as the potential client's level of sophistication, competence and knowledge of English</li> <li>Take note especially of time constraints and limitation periods and ensure the potential client understands that no action will be taken until instructions are accepted and the costs agreement is signed</li> <li>Consult a senior practitioner if there are reasonable grounds to believe that the potential client does not understand what is being communicated</li> </ul>
Potential controls	<ul style="list-style-type: none"> <li>Practice capability statement (brochure or online) outlining extent of services, areas of specialisation and team capability</li> <li>Confirmation of instructions template to explain instructions and obtain written confirmation of the potential client</li> </ul>
Capability	A senior practitioner should be assigned accountability for ensuring the practice's capability and approach is understood by the client
Supervision	A senior practitioner should oversee the conduct of communicating practice's approach and check that the matter is not beyond the competence of the practice, including signing off on correspondence to the potential client

## Decide to accept or reject client and matter

Activity	Requirement
Requirement	Consider key risks identified during screening, decide whether to take on matter and communicate to the potential client and related parties
Risk considerations	<p>The key risks to be considered in deciding to accept or reject the matter are:</p> <ul style="list-style-type: none"> <li>practitioner’s conduct unintentionally creating a solicitor/client relationship and fiduciary duty, but the potential client is not identified as such by the practice (e.g. off the cuff advice to family or friends, or ‘preliminary advice’ in a marketing meeting)</li> <li>practice accepts engagement without adequate consideration of a risk arising during screening (i.e. in requirements 1 – 6 above)</li> </ul>
Must do’s	<p>The “must do’s” in deciding to accept or reject the client and matter are:</p> <ul style="list-style-type: none"> <li>ensure practitioners do not by their conduct create a solicitor/client relationship outside the practice’s client screening and engagement controls</li> <li>ensure that the accountable senior practitioner for each client has sufficient information to exercise judgment as to whether the practice should accept or reject the client and matter</li> <li>if accepting the matter, communicate the decision in writing to potential client in a timely manner and advise the potential client that the practice is not acting until the formal engagement offer has been accepted</li> <li>if rejecting the matter, communicate the decision to the potential client in a timely manner</li> </ul>
How to’s	<ul style="list-style-type: none"> <li>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</li> <li>When communicating to the new client, provide clear instructions as to what he must do and what he must provide, and when, in order for firm to meet his objectives</li> </ul>
Potential controls	<ul style="list-style-type: none"> <li>Standard letter accepting instructions</li> <li>Standard letter declining to act</li> </ul>
Capability	A senior practitioner or partner should be assigned accountability for deciding to accept or reject a matter
Supervision	A senior practitioner or partner should sign off on all correspondence relating to accepting or rejecting the matter

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