COVID-19 Matter Management Guidance

Law Mutual (WA)®

Heat Map

The heat map provides a high level view of where working from home and other COVID-19 changes have the potential to increase risks or undermine controls associated with matter management activities. Pages 2 – 6 provides further detail on COVID-19 risks and controls for each phase of a matter.

Phase	Screen prospective client and matter	Engage client	Provide and monitor service	Close and manage aftercare
Purpose	**Reach in principle decision to accept or reject matter**	**Achieve shared understanding and binding agreement on scope, costs & fees and services**	**Deliver agreed services to professional standards and to Client satisfaction**	**Confirm completion of agreed services and respond to post completion developments**
Matter Management Activities	Identify the prospective client	Understand the client's sophistication	Manage file	Check legal requirements met
	Understand nature of legal need	Understand key facts and client objectives and explain options for achieving these	Provide advice on conduct and potential outcomes of matter	Check scope and services in agreement to deliverables
	Communicate approach and capability	Explain rights, obligations and requirements	Undertake further investigation	Render final bill
	Screen prospective client	Scope services and fees	Conduct legal research	Confirm matter closed
	Screen capability and appetite to conduct matter	Make disclosures and obtain consents	Draft and lodge documents	Archive documentation
	Check for conflict of interest	Sign appropriate costs agreement	Provide representation	File transfer (if required)
	Decide to accept or reject matter	Confirm engagement	Engage experts	Answer post completion enquiries
			Render bills	

Activities	All Phases
	Take notes and communicate with stakeholders
	Comply with requirements
	Meet time requirements
	Ensure ongoing supervision

- Significant change to risk and control in pandemic state
- Moderate change to risk and control in pandemic state
- No change to risk and control in pandemic state

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Phase 1: Screen prospective client & matters

<table>
<tr><th>Phase</th><th colspan="4">Screen prospective client and matter</th></tr>
<tr><th>Purpose</th><th colspan="4">Reach in principle decision to accept or reject matter</th></tr>
<tr><td rowspan="10">Matter Management Activities</td><th>Activity</th><th>Requirement</th><th>Pandemic risk</th><th>Control considerations</th></tr>
<tr><td>Identify the prospective client</td><td>Be certain about the Client’s identity by conducting relevant checks</td><td>• Inability to conduct face to face meetings and verify documents confirming identity
• More incidents where person making initial enquiry is doing so on behalf of someone else</td><td>• Use video conferencing (VC) rather than phone call for initial meetings
• VC protocol (practice’s requirements for video conferencing) to include requirements for document verification e.g. do not accept heavily pixelated screen, situations where original must be physically sighted
• Ensure that practice establishes who is actual client and, if person making enquiry is an agent, their authority to act</td></tr>
<tr><td>Understand nature of legal need</td><td>Take sufficient initial instructions to understand the nature of the facts, the legal issues to be addressed and the overall approach to conducting the matter</td><td>• Inability to adequately take key instructions and gauge clients body language</td><td>• Use video conferencing (VC) rather than phone call for initial meetings
• VC protocol to include guidance on how to effectively communicate on legal matters via video conference
• Review initial instructions checklist or similar documents for use with VC
• Ask client to confirm initial instructions and facts by email</td></tr>
<tr><td>Communicate approach and capability</td><td>Ensure the client understands the Practice’s capability (and limits) to acting on the client’s behalf</td><td>• Inadequate understanding of capability and limits to service in non-face to face communication</td><td>• Ensure capability and limits explained and confirmed in initial VC meeting
• Include this information in email to client</td></tr>
<tr><td>Screen prospective client</td><td>Conduct relevant background checks to assure the practice of the client’s suitability and financial capacity</td><td>• Inability to gauge body language and determine character of client.
• Client’s financial capability has significantly changed as a result of pandemic</td><td>• Use video conferencing (VC) rather than phone call for initial meetings
• Review how practice identifies high risk clients and adapt to VC. Are there new “red flags” that can be applied?
• Discuss with client how pandemic may impact personal/business finances and ability to pay costs
• Review practice requirements for money on trust</td></tr>
<tr><td>Screen capability and appetite to conduct matter</td><td>Escalate to the managing partner if the matter is high risk, complex or unusual for further scrutiny prior to accepting instructions</td><td>• Failure to escalate high risk matter/client within the firm</td><td>• Review with all lawyers who conduct initial meeting, what constitutes a ‘high risk’ matter for the firm in a pandemic environment and the requirement to escalate e.g. fast changing law, new area of law for practice
• Make provision in case key personnel is unable to conduct work</td></tr>
<tr><td>Check for conflict of interest</td><td>Consider whether the Practice has any potential conflict of interest and communicate the nature of the conflict and approach to resolving it to the client</td><td>• Conflict checking practices ineffective in remote environment
• Conflict with actual client where person in initial meeting is agent</td><td>• Check that all formal and informal aspects of conflict checking process can be maintain when working from home (WFH) e.g. support staff have remote access to systems, any informal office discussions on new work are replicated online
• Introduce more rigour around establishing whether person giving instructions is your client or your client’s agent</td></tr>
<tr><td rowspan="3">Decide to accept or reject matter</td><td>Consider key risks in conducting the matter against the Practice’s risk appetite</td><td>• Nature of risk, risk appetite in pandemic environment or take on riskier work to keep practice going</td><td>• Partners discuss and agree risk appetite i.e. what is balance between need for cash flow vs. risks around doing work in new areas of law, understanding fast changing laws, maintaining service quality with reduced personnel and WFH, client’s inability to pay, delayed legal remedies etc.
• Increase rigour of partner-to-partner review of what matters are accepted on behalf of practice</td></tr>
<tr><td>Communicate to the client if the Practice decides to accept a matter that the Practice cannot act without a signed costs agreement</td><td>• No change</td><td></td></tr>
<tr><td>Communicate to the client if the Practice decides not to accept a matter and the reasons for this</td><td>• No change</td><td></td></tr>
</table>

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COVID-19 Matter Management Guidance

Phase 2: Engage client

Phase	Engage client			
Purpose	Achieve shared understanding and binding agreement on scope, costs & fees and services			
Matter Management Activities	**Activity**	**Requirement**	**Pandemic risk**	**Control considerations**
	Understand the client's sophistication	Gauge the client's level of sophistication in accordance with the Act, capacity and capability to give instructions, receive and act on advice and adapt an approach to engaging and communicating with the client accordingly	• Inability to gauge sophistication without face to face meeting • Increasing number of unsophisticated clients	• Use VC rather than phone call to gauge client sophistication • Ensure correct questions are asked to form view while using VC • Ensure more senior practitioner engaged
	Understand key facts and client objectives and explain options for achieving these	Capture the client's objectives and concerns about the conduct of the matter	• Impacts of pandemic on legal process and options e.g. access to courts, unwillingness to wind up companies, new options for credit, impact of travel restrictions etc. • Client uncertainty about own situation and objectives	• Use VC rather than phone call to understand client objectives and concerns • Consider impacts of pandemic on legal process and options • Identify areas of uncertainty and any assumptions being made • Flag these with client and agree on process to review and update objectives, strategy and options more frequently
	Explain rights, obligations and requirements	In accepting instructions the Practice has communicated to the potential client in accordance with disclosure requirements of the Act nature of instructions. requirements, legal team, fee basis and agreement	• Impacts of pandemic on legal process and options e.g. access to courts, unwillingness to wind up companies, new options for credit, impact of travel restrictions etc. • Client uncertainty about own situation and objectives	• Emphasise uncertainty around advice and potential change and delays
	Scope services and fees	Consider the nature of matter, skills and availability of required personnel to conduct the matter to meet the client's requirements	• Impact of redundancies and WFH • Fast changing legislative and legal environment • Fast changing client needs	• Take more time to scope, taking account issues above, and with more involvement, supervision and challenge from senior practitioners • Continual lessons learned on scoping, i.e. review how early matters run under pandemic conditions and update service and fee agreements if required
	Make disclosures and obtain consents	Engage with relevant third parties to ensure communication and response of relevant disclosures and consents	• Availability of third parties and response times	• Request 3rd parties send receipt of message in case they are experiencing connectivity issues while WFH • Identify any changes to 3rd party practices /response times
	Sign appropriate costs agreement	The firm should not act until a costs agreement that meets the requirements of the Act has been signed In varying the agreement, the firm should communicate and obtain client's agreement to the variation	• Approach to service delivery cannot be achieved in current environment	• Review provisions of agreement relating to how service is delivered, and update as required for WFH - turn-around times, meetings, impact of any reduced hours or redundancies etc. • Where provisions are now unrealistic or uncertain, communicate with the client and lead a discussion around that uncertainty - what is uncertain and why? what are the range and likelihood of outcomes? and who will bear the risk of that uncertainty – the client or the practice?
	Confirm engagement	The firm should communicate with the client and third parties in writing that it now acts on behalf of the client	• No change	

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Phase 3: Provide and monitor service

Phase	Provide and monitor service			
Purpose	**Deliver agreed services to professional standards and to Client satisfaction**			
Matter Management Activities	**Activity**	**Requirement**	**Pandemic risk**	**Control considerations**
	Manage file	Ensure a consistent effective and efficient practice for opening, monitoring and closing the file	• Hard and soft information not integrated within single file • Management of paper-based communications	• Ensure digital version of file contains all information as the single source of truth of file content • Establish uniform approach to how paper-based communications and key documents in office are captured and made available in digital version of file
	Provide advice on conduct and potential outcomes of matter	Clearly communicate the strategy for the conduct of the matter in accordance with the client's instructions	• Managing client expectations around outcomes and strategy in pandemic environment • Communicating complex ideas and advice remotely	• VC protocol to provide guidance on communicating complex ideas and advice remotely • Identify assumptions and areas of uncertainty when discussing potential outcomes and strategy • Confirm in writing instructions, facts, assumptions, areas of uncertainty, advice and actions • Agree on ongoing review and adaptation of strategy to changing environment
	Undertake further investigation	Ensure relevant facts are gathered to inform decisions, communication, strategy and actions in the conduct of the matter	• Requirement to make assumptions in uncertain environment which are incorrect, not communicated nor not checked	• Interrogate whether 'facts' are actually assumptions in pandemic environment and need to be investigated and confirmed • Standard instructions template which is updated regularly over course of each matter to identify assumptions and confirm facts
	Conduct legal research	Ensure understanding of the need for and undertake appropriate legal research on the basis of most relevant and current references	• Higher risk appetite due to drop in work results in accepting matters outside areas of expertise • Fast changing legal environment • Access to required legal research when WFH	• Ensure access to latest legal advice on pandemic legal environment and general legal research • Consider engaging counsel for advice on matters that are outside expertise/complex/subject to legal change due to pandemic • Ensure updated understanding of law is disseminated when WFH
	Draft and lodge documents	Use of firm precedents and client instructions to ensure accurate and compliant documentation is drafted and lodged according to relevant procedure	• Quality control and review of documents for completeness and accuracy in remote working environment	• Review rigour of peer/supervisory review of documentation when WFH
	Provide representation	Act on client instructions and on the basis of relevant legal procedures to communicate, advocate, agree and initiate action with relevant third parties to achieve client objectives	• Effectiveness of advocacy and negotiation in remote environment	• VC protocol to provide guidance on communicating complex ideas and advice remotely • Follow up in writing where appropriate
	Engage experts	Engage appropriate and competent barristers and experts, fully brief and monitor delivery of their scope of work	• No change	
	Render bills	Provide bills and a description of the work undertaken in accordance with the costs agreement Ensure can fully account for monies received by or on behalf of the client	• No change	

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Phase 4: Close and manage aftercare

Phase	Close and manage aftercare			
Purpose	Confirm completion of agreed services and respond to post completion developments			
Matter Management Activities	**Activity**	**Requirement**	**Pandemic risk**	**Control considerations**
	Check legal requirements met	Review file to ensure compliance with relevant procedural and regulatory requirements	• No Change	
	Check scope and services in agreement to deliverables	Review the matter and outcomes to ascertain whether client's objectives were achieved and expectations were met in the conduct of the matter and lessons for future matters	• Changes in post pandemic environment alter client's objectives/expectations or give rise to new options that are not identified • Failure to learn lessons to improve matter management during pandemic environment	• Consider possibility of changes to legal position and advice in post pandemic environment • Ongoing formal/team review of lessons to quickly adapt service delivery in pandemic environment.
	Render final bill	Reconcile payments to bills rendered and WIP Where required, provides monies owed to the client in a timely manner	• No change	
	Confirm matter closed	Explain to the client the outcome of the matter, reasons and implications for the client	• Changes in post pandemic environment alter client's objectives/expectations or give rise to new options that are not identified • Failure to learn lessons to improve matter management during pandemic environment	• Consider possibility of changes to legal position and advice in post pandemic environment. • Ensure constraints imposed by environment and implications are explained
	Archive documentation	Archive the file and return client documents as required	• Hard and soft information not integrated within single file	• Ensure digital version of file contains all information as the single source of truth of file content. Fully scan paper file • Consider keeping files open until return to office
	File transfer (if required)	Where the Practice terminates its services prior to the conclusion of the matter it: provides reasonable and just grounds for terminating it has communicated that it has ceased acting to the client and relevant stakeholders has rendered final account and returned document	• Hard and soft information not integrated within single file	• Ensure digital version of file contains all information as the single source of truth of file content. Fully scan paper file and ensure contactless file transfer
	Answer post completion enquiries	Provide required information and assistance recognising that the firm no longer acts for the client	• No change	

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All Phases

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	Activity	Requirement	Pandemic risk	Control considerations
Matter Management Activities	Take notes and communicate with stakeholders	Takes accurate and complete contemporaneous notes concerning instructions received, advice given, information communicated and action taken	• No Change	
		Retains all information in relation to the matter in a central location comprising logically ordered and identified documentation	• See Provide & monitor service – Manage file	• See Provide & monitor service – Manage file
		Ensures other practitioners are able to understand status and conduct of the matter if needed	• See Provide & monitor service – Manage file	• See Provide & monitor service – Manage file
		Ensures ongoing communication and feedback from the client so that client expectations on performance, cost and outcomes are constantly managed	• Managing client expectations and communication in remote environment. • Assumptions and frequency of change	• See Provide & monitor service
		Promptly notifies the client of any material change in the Practice's conduct of the matter including changes to the Practice, scope, responsible practitioner and fees and costs	• Redundancies and WFH impact Practice's conduct of matter	• See Engagement – Scope matter • Ongoing monitoring of conduct against updated agreement
		Monitors decision making and client authority to give instructions where multiple points of contact during conduct of matter	• No change	
	Comply with requirements	Consistently and appropriately gives and complies with required undertakings	• No change	
		Maintains privacy and security of documentation and confidentiality of client communications at all times	• Breach of confidentiality on information and VC communications due to remote working / unauthorised access to information	• Ensure IT expert reviews adequacy of cyber security management system for WFH • Establish and enforce remote working procedure, based partly on recommendations of IT expert
		Periodically reviews for changes to conflict of interest position as matter progresses	• No change	
	Meet time requirements	Identifies, tracks and ensures important dates are considered and met during the conduct of a matter	• Deadline tracking process does not work in remote working environment • Decline in administrative assistance/ resources for time tracking and meeting deadline	• Confirm that deadline tracking processes work effectively when WFH • Confirm roles and responsibilities for tracking and communicating deadlines WFH • Review communication and coordination of WFH resources to meet deadlines, esp. in hours leading up to deadline, when people WFH may be pulled away from work
		Conducts the matter in a timely and efficient manner in accordance with the client's instructions	• Flexibility of working at home; casual working environment; efficiency of home and remote working practices	• Establish and enforce remote working procedure • Review home office set up and approach to time and people management • Increase frequency of time and file status reviews
	Ensure ongoing supervision	Supervisors regularly meet with and review the work of the practitioner who conducts the matter	• Ineffective supervision in a remote working environment	• Increase frequency of formal reviews (via VC) • Ensure more informal peer to peer review between senior practitioners
		Ensures legal advice is always provided or confirmed in writing and that supervisors review any legal advice prior to communicating it with the client	• Failure to review and sign off key correspondence	• Mandate requirement for senior practitioner/partner to review and sign off any legal advice or material communication

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