**Legal Practice Self-Assessment Audit**

**INTRODUCTION**

There are over 6,000 law practices currently registered within Victoria with new practices registered each day. Like any business, law practices require strong and appropriate internal management systems in order to operate successfully, service their clients’ needs and meet their regulatory obligations. Similarly law practices can also fail as can any business, and poor or inappropriate management practices are often at the root of such failures.

The Victorian Legal Services Board works with lawyers and law practices to foster and promote high quality practice standards across the Victorian legal profession. The Legal Profession Uniform Lawrequires the Board to ensure law practices implement appropriate management systems within their operations which are in accordance with their regulatory obligations. The Board therefore has the authority to direct practices to make changes to the management systems they use, where necessary.

While the Board can formally audit a law practice where obvious problems exist (such as those identified in complaints or through a trust account investigation), it has opted to pursue an educative strategy to assist law practices towards compliance. As part of this strategy the Board has developed the below self-assessment audit, designed to assist law practices deliver on client expectations and meet their regulatory obligations. The audit is based on ten objectives identified by the Board as being critical to a law practice delivering strong governance.

The ten objectives are:

1. competent work practices to avoid negligence;
2. effective, timely and courteous communication;
3. the timely delivery, review and follow up of legal services to avoid delay;
4. acceptable processes for liens and file transfers;
5. providing for a shared understanding and appropriate documentation from commencement through to termination of engagement covering costs disclosure, billing practices and termination of engagement;
6. timely identification and resolution of conflicts of interest;
7. safe and secure records management;
8. timely compliance with undertakings, orders and rulings;
9. the effective supervision of the practice and its staff; and
10. avoidance of any failure to account for trust monies.

The self-assessment audit describes several key concepts relevant to each of the ten objectives which law practices should be mindful of. It also provides suggested approaches to help law practices ensure the objectives are met. The suggestions are not exhaustive or prescriptive; each law practice is different so it will be up to each individual practice to determine the most effective systems for them.

The intent of the self-assessment audit is to encourage ethical practice within law practices, promoting professional standards, competence and honesty. The Board encourages law practices to engage positively in the self-assessment process and to candidly identify areas of non-compliance.

***Please note: law practices are NOT required to submit this self-assessment audit document to the Board. It is intended to be used within the law practice to assist in identifying areas which require further attention.***

The ratings shown below may assist users to assess the systems in place within their firms when considering the ten objectives. Please note that **all examples provided in this document are suggestions only.**  Law practices vary in terms of size, work practices and nature of operations and thus no “one size fits all”.

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| **Self-Assessment Rating** | **Explanation** |
| 1 | The Objective has not been addressed. |
| 2 | The Objective has been addressed but management systems are not fully functional. |
| 3 | Management systems exist for the Objective and are fully functional. |
| 4 | Management systems exist for the Objective and are fully functional and regularly assessed for effectiveness. |
| 5 | The Objective has been addressed, all management systems are documented and all are fully functional, and all are assessed regularly for effectiveness plus improvements are made when needed. |

*If you have any questions regarding the completion of the self-assessment audit, please do not hesitate to contact the Victorian Legal Services Board on 03 9679 8001.*

1. **NEGLIGENCE**

**Objective:**

Competent work practices to avoid negligence

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented** | **Details of System Improvement required** |
| --- | --- | --- | --- |
| Fee earners practise only in areas where they have appropriate competence and expertise. | A written statement setting out the types of matters in which the practice will accept instructions and those instructions will not be accepted in any other types of matters. |  |  |
| All fee earners have a good grasp of issues involved in running a practice and serving clients. | Written records of attendance at CPD programs indicating attendance at programs concerning practice management, staff management and risk management. |  |  |
| The law practice meets on a regular basis to review the performance of the practice or, in the case of sole practitioner practices; meetings are held regularly with staff. | Minutes or Notes recording the decisions taken at meetings and the actions taken. |  |  |
| The law practice regularly considers and reviews workloads, supervision, methods of file review, and communication with clients. | Written records including file registers, number of files assigned to each fee earner, dates and methods of file review. |  |  |
| The law practice ensures that legal services are always delivered at a consistently high standard. | Up to date precedents covering relevant practice areas are available and used, the practice has appropriate resources for legal research in the areas in which it accepts instructions (e.g. subscriptions to loose leaf services, up to date text books, training in internet based research) and the work of all employed solicitors and paralegals is properly supervised. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |

1. **COMMUNICATION**

**Objective:**

Effective, timely and courteous communication

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented /  Location of evidence** | **Details of System Improvement required** |
| --- | --- | --- | --- |
| Clients are always informed in writing of the steps involved in their matter. | Written descriptions of the processes involved for each type of matter in which the practice accepts instructions are available and given to each client. These descriptions can be in the form of a short letter, a brochure, pamphlet or otherwise. |  |  |
| The ambit of the retainer is described precisely in writing to the client and includes a statement of what the practice will and will not do. | In every matter there is a written retainer (often part of the costs agreement). |  |  |
| The likely time frame involved in each matter and the likely cost is disclosed in writing to each client. | Disclosed in each matter in the written retainer or in the costs agreement. |  |  |
| All staff likely to be involved in the matter are disclosed to the client. | Disclosed in retainer and/or costs agreement. |  |  |
| Methods and time frames for communicating with the client are agreed at the start of each matter and are adhered to. | A working plan exists for each matter, which deals with client communication, time frames for return of telephone calls, responses to correspondence, responses to emails etc. |  |  |
| All comments and complaints by clients are dealt with promptly and, where possible, by someone else in the practice other than the person complained about. | A written record of the system for dealing with client comments and complaints and a written record of monitoring client satisfaction. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |

1. **DELAY**

**Objective:**

Timely delivery, review and follow up of legal services to avoid instances of delay

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented /  Location of evidence** | **Details of System Improvement required** |
| --- | --- | --- | --- |
| The client is regularly kept informed at each stage of the matter and is provided with periodic billing. | A system for ensuring that the working plan in each matter (see above) is adhered to and that the file contains all appropriate file notes or time records or other evidence that the plan has been adhered to. |  |  |
| The file contains a complete record of all aspects of the transaction or matter. | Copies of all letters, notes, emails, records of telephone calls, statements, calculations and tax invoices are on file. |  |  |
| Critical dates are recorded, monitored and complied with. | Procedures for regular review of files, checklists and a firm-wide diary system, which may or may not be computer based. |  |  |
| Procedures for locating files and documents and for monitoring activity in all open files. | Documented procedures effective in:   1. locating files and tracing documents, correspondence and other items relating to any matter that is open or has been closed but the file is still retained by the law practice; 2. monitoring files for inactivity at pre-determined times. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |

1. **LIENS AND FILE TRANSFERS**

**Objective:**

Acceptable processes for Liens and File Transfers

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented /  Location of evidence** | **Details of System Improvement required** |
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| Timely preparation of bills of costs when a file transfer is requested. | Policy and procedures covering liens and file transfers, appropriate records of costs to date and a list of those documents to be transferred or retained where necessary are on file. |  |  |
| Acceptable processes for release of documents to clients. | Rules covering professional obligations in relation to client’s documents upon termination of engagement are followed. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |

1. **COST DISCLOSURE, BILLING PRACTICES &  
   TERMINATION OF ENGAGEMENT**

**Objective:**

Providing for a shared understanding and appropriate documentation from commencement through to termination of engagement covering costs disclosure, billing practices and termination of engagement

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented /  Location of evidence** | **Details of System Improvement required** |
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| The use of established new client engagement procedures including universal use of approved retainer or costs agreements. | An acceptable and “client‑friendly” form of retainer or costs agreement that complies with the Rules and Regulations. |  |  |
| Standardised procedures for collecting client data, opening of new files and the recording of data within the firm’s accounting and practice management systems with provision for separate client records in the case of multi-disciplinary practices. | A disclosure policy (e.g. whether or not taking advantage of exceptions to disclosure, policy about disclosure of costs of non-legal services used in the legal matter) with a process ensuring disclosure is made in accordance with the Act, Rules and Regulations. Register or Practice Management system listing files and individual client files. |  |  |
| What should happen when an engagement is terminated and what action(s) should be taken if this occurs close to a critical date? | The client receives written confirmation (unless exceptional circumstances apply) of:   1. the outcome, any further action the client is to take in the matter and what, if anything, the practice will do next; 2. the arrangements for storage and retrieval of retained documents (if any). 3. accounting to the client for any outstanding money; 4. return of original documents and other property belonging to the client; 5. Information about whether the matter should be reviewed in the future and if so, when; and 6. Where the practice terminates the engagement or withdraws its services, grounds for such action are clearly stated in writing to the client. |  |  |
| Use of an established policy for formulating accounts and a system for checking bills of costs for compliance with policy. | Capacity for accurately recording time or another acceptable basis for charging clients and a process for the issue of tax invoices to clients. |  |  |
| Review of all files ready to be closed by legal practitioners to ensure all steps have been taken to complete the matter including return of client documents and issue of a final account. | Appropriate letter on file, executed releases where needed, provision of copy documents to external parties as required and a note as to whether client needs further services if new developments arise. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |

1. **CONFLICTS OF INTEREST**

**Objective:**

Timely identification and resolution of the many different incarnations of Conflict of Interest (including when acting for both parties or acting against previous clients as well as potential conflicts which may arise in relationships with debt collectors and mercantile agencies, or conducting another business, referral fees and commissions, etc.)

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented /  Location of evidence** | **Details of System Improvement required** |
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| Recognition that:   1. conflicts can emerge in many areas and contexts, be they potential or actual; and 2. conflicts can emerge before or during an engagement, may arise if acting against a previous client, where acting for more than one client, and where the solicitor prefers his/her interests over those of the client. | Policy and procedures for conflict of interest checks.  The taking of full instructions, especially in commercial matters, from clients as to companies and related entities in which the client is involved.  Maintenance of a suitable database that records all relevant details of the parties and related corporations and related entities to facilitate conflict checks.  Conflict checks are undertaken prior to file opening and the result of search processes, including electronic and paper based records, is evident.  When there has been some change in the matter (like a new party becoming involved), further conflict checks are carried out. |  |  |
| Being aware of potential conflicts if holding an office that may lead to conflict with the interests of a client. | A system for opening and recording files with written policies and procedures and checklists for determining circumstances of conflicts. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |

1. **RECORDS MANAGEMENT**

**Objective:**

Minimising the likelihood of loss or destruction of correspondence and documents through appropriate document retention, filing, archiving, etc. and providing for compliance with requirements as regards registers of files, safe custody, financial interests.

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented /  Location of evidence** | **Details of System Improvement required** |
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| The practice has appropriate mail opening and distribution processes, including electronic mail. | A clear policy and related procedures exist. |  |  |
| File management processes with an appropriate matter closing procedure and a system for safe custody and document retention as well as storing and accessing files. | Established processes with checklists for opening, maintaining, moving, reviewing and closing files. Also safe custody / document retention and file closing records.  In the case of files stored externally, a record of that arrangement.  A diary system, which may or may not be computer based, accessible to necessary staff, especially for critical dates in matters.  Maintaining a backup record of key dates.  Identifying relevant matters (when acting for a client in a number of matters) and linking files (where more than one file is relevant to the client’s case). |  |  |
| Files for legal services are kept separate from files for “non-legal” services. | A system to determine who is able to access legal files / safe custody and mechanisms to ensure that staff know and observe these. |  |  |
| Reliable systems to account for safe custody documents, current and past files, and practitioners financial interests. | A File Register, Safe Custody Register, and a Register of Financial Interests are held and are up to date. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |

1. **UNDERTAKING**

**Objective:**

Providing for undertakings to be given, monitoring of compliance and timely compliance with notices, orders, rulings, directions or other requirements of Courts and regulatory authorities such as the Victorian Legal Services Board + Commissioner, Cost Assessors.

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented /  Location of evidence** | **Details of System Improvement required** |
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| Knowing the implications of providing undertakings and compliance is monitored on a regular basis. | A Register or Record of solicitor undertakings (their authorisation and monitoring, including discharge) given on behalf of the practice.  Timely and full responses are given to notices, orders, rulings, etc. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |

1. **SUPERVISION OF PRACTICE AND STAFF**

**Objective:**

Providing for compliance with statutory obligations covering licence and practising certificate conditions, employment of persons and ensuring proper quality assurance of work outputs and performance of legal, paralegal and non-legal staff involved in the delivery of legal services.

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented /  Location of evidence** | **Details of System Improvement required** |
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| Ensuring all practitioners have the correct practising certificates. | For a law practice which maintains a trust account, there must be a practitioner with a practising certificate authorising them to receive trust money. |  |  |
| Ensuring notifications of changes are provided to the Board. | The law practice is required to notify the Board of any change in the details to be recorded on the register within 14 days after it occurs.  Copies of letters and/or advices sent to the Board. |  |  |
| The law practice meets on a regular basis (at least monthly) to review the performance of the practice with an agenda covering such items as operational and work or risk management policies and controls, compliance issues and people management.  In practices with one principal legal practitioner, such meeting should be held with senior staff such as selected employed solicitors, paralegals, bookkeeper, etc. | Minutes or Notes of such meetings recording the matters covered, decisions agreed on and action taken. |  |  |
| Compliance with the Application Act, legal profession rules and regulations, and other statutory or taxation obligations. | On a periodic basis, at least several times a year, there is a review of compliance. All personnel, both professional and support, are aware of relevant obligations and compliance standards and a record of outcomes and action taken are kept.  Evidence of compliance with withholding tax obligations eg. PAYG, GST as well as payment of superannuation guarantee contributions. |  |  |
| A delegation process ensuring that:   1. staff are clear about the boundaries of their role, responsibilities and authority 2. staff are capable of doing the work delegated | People management policies and procedures, a file of executed employment agreements, duty statements/job descriptions of all staff and copies of up to date practising certificates. |  |  |
| A structured induction and training program, which will ensure that all staff are properly trained and qualified for the duties they are employed to perform. Induction and training should also cover statutory obligations in the Legal Profession Uniform Law; Workers Compensation, holidays and leave, etc. | Documented induction procedures for both professional and support staff; a training register for both professional and non‑professional staff and records of training needs being addressed in the staff performance review process. |  |  |
| Staff performance reviews should be carried out on a periodic basis no less frequently than once a year. | Records of regular staff feedback and appraisal. |  |  |
| All current files are reviewed by a legal practitioner or nominated supervising practitioner on an appropriate periodic basis. | Notations on files used to review and discuss files with employed solicitors.  Compliance with policy and procedures is part of staff performance reviews. |  |  |
| Development of budgets. | Budgets are in place and future profitability is monitored. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |

1. **TRUST MONEY & TRUST ACCOUNTS**

**Objective:**

Avoiding failure to account.

| **Key concepts to consider to address the Objective** | **Examples of possible evidence or systems most likely to lead to compliance** | **Arrangements already implemented /  Location of evidence** | **Details of System Improvement required** |
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| Accounting systems established for:   1. General Other 2. Trust 3. Controlled Money 4. Transit Money | A suitable accounting software package with appropriate written delegations and procedures for the handling of trust monies especially issue of trust account cheques. |  |  |
| Suitably trained and/or qualified staff are involved. | Accounting records are accurate, up to date and regularly monitored. |  |  |

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| **Overall rating for Objective** *(Please circle one rating)* | **1** | **2** | **3** | **4** | **5** |