



Australian
Competition &
Consumer
Commission

with compliments

IP Australia

14 JUN 2006

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

Hi Karen,
Please find attached the
memo for GM 947402


Kind regards

Sue





Certified copy
pursuant to section 175(2)(b)
of the *Trade Marks Act 1995*


Commissioner *RAY CHAN* Date *28/04/2005*

The Law Society

— OF WESTERN AUSTRALIA —



QUALITY PRACTICE STANDARD

Approved 1996

Amended 2002



PURPOSE

This Standard has been approved by The Law Society of Western Australia (Inc).

The Standard is not compulsory, but if a practice undertakes certification it must comply with the Standard in full. It does not cover all the requirements imposed on legal practitioners by law (such as the way trust accounts must be handled) and by the ethical rules of the profession (such as the way conflicts of interest must be handled).

However, The Law Society considers that the Standard reflects the highest standards of legal practice and recommends that it be followed by all legal practitioners in Western Australia.

This Standard may be used for certification and to assist legal practitioners to achieve best practice levels in the provision of legal service.

INTERPRETATION

In this Standard the word PRACTICE is used to include:

- a legal practitioner practising on his or her own; and
- two or more legal practitioners practising in partnership, and
- any part of a government authority or body or any part of a corporation or other business association or enterprise which, provides legal services.

Other definitions are given in section 6. Defined words appear in capitals.



CONTENTS

- 1 PRACTICE MANUAL
- 2 TAKING INSTRUCTIONS
 - 2.1 Appropriate Expertise
 - 2.2 Conflicts of Interest
 - 2.3 Confirmation of Instructions, Cost, Timing and Client Expectations
- 3 HANDLING A MATTER
 - 3.1 Activity Recording
 - 3.2 File Management and Review
 - 3.3 Key Dates
 - 3.4 Authority Levels
 - 3.5 Progress Reports and Subsequent Instructions
 - 3.6 Variations in Handling a Matter or Costs
 - 3.7 Billing
 - 3.8 Changes in Professional Personnel
- 4 FINISHING A MATTER
 - 4.1 Reporting
 - 4.2 Accounting for Money and Property
 - 4.3 Document Storage
 - 4.4 File Storage
- 5 OTHER PROCEDURES
 - 5.1 Personnel
 - 5.2 Reference Materials
 - 5.3 Procedures for Client Redress
 - 5.4 Technology Policy



6 DEFINITIONS

1. PRACTICE MANUAL

.....

The PRACTICE must have a manual setting out the procedures which, address the requirements of this Standard. The manual must be authorised by a senior member of the PRACTICE. The PRACTICE must implement the procedures in the manual. It must be maintained in a current form. The manual must be made available to all staff of the PRACTICE, not just fee earning staff.

2. TAKING INSTRUCTIONS

.....

Section 2 of the Standard applies when instructions are first taken or when a new matter begins.

2.1 Appropriate Expertise

The PRACTICE must not accept new instructions or begin a new matter if it does not have the professional capacity, resources and time to deal with it. Only PROFESSIONAL PERSONNEL who have authority to accept instructions may do so.

2.2 Conflicts of Interest

The PRACTICE must implement a procedure for identifying a conflict of interest before instructions are accepted or work is commenced. If a conflict of interest is subsequently identified, the PRACTICE must deal with it in an appropriate way. The PRACTICE must inform the client of the conflict of interest and the way the problem will be resolved in writing as soon as reasonably possible.

2.3 Confirmation of Instructions, COSTS, Timing and Client Expectations

Unless the PRACTICE can demonstrate it is impractical to do so, when instructions are taken or as soon as reasonably possible afterwards, the PRACTICE must write to or otherwise advise the client: (Evidence of the advice must be held on the file)

- (a) confirming the instructions which have been accepted or explaining why the instructions cannot be accepted;
- (b) confirming the scope of the work which is to be done and the services which are to be provided by the PRACTICE;
- (c) how the matter should be handled including the scope of personal information to be collected for the purpose of doing the work or providing the service, how



it is likely to be collected, held, used and disclosed and how the personal information may be accessed and corrected;

- (d) any alternative courses of action which could be taken;
- (e) indicating the name and status of the PROFESSIONAL PERSONNEL who will have day-to-day responsibility for handling the matter;
- (f) indicating, (except in the case of a PRACTICE consisting of a single practitioner) the name of the partner (where relevant) and the PROFESSIONAL PERSONNEL responsible for supervising the matter;
- (g) how long the matter is likely to take (having regard to the client's requirements and expectations);
- (h) explaining the basis upon which COSTS will be charged;
- (i) giving an estimate of COSTS and disbursements explaining their timing and effect and indicating billing intervals and payment arrangements and, where applicable, that consent will be required to apply money in the PRACTICE's general trust account for the client towards the payment of COSTS and disbursements;
- (j) giving advice about the recoverability of COSTS from any other person, or payable to any other person or party (where relevant);
- (k) indicating procedures and relevant COSTS of engaging the services of any person in relation to the matter, such as an independent barrister (where relevant);
- (l) the likely outcome;
- (m) indicating what procedures the PRACTICE has to deal with complaints and also indicating the client's rights to seek redress under the Legal Practitioners Act;
- (n) Indicating that the client's files and personal information may be subject to a review, where applicable, by a partner or supervising PROFESSIONAL PERSONNEL or trust account auditor or a Quality Practice Standard auditor;
- (o) Indicating that at the conclusion of the matter what DOCUMENTS will be retained by the PRACTICE, who will have access to the DOCUMENTS and security arrangements in relation to the DOCUMENTS.



3. HANDLING A MATTER

Section 3 of the Standard applies during the handling of a matter:

3.1 Activity Recording

The PRACTICE must RECORD and account for all services provided to the client irrespective of whether those services are to be charged for. Time spent by PROFESSIONAL PERSONNEL in relation to services provided to the client and disbursements incurred for the client and to be paid by the client must be recorded accurately and as soon as reasonably possible after the time is spent or disbursements incurred. Detailed RECORDS of activities in relation to services provided to the client must be kept. Where appropriate, file notes must be made.

3.2 File Management and Review

The PRACTICE must implement procedures which, are designed to:

- (a) deal with all matters as quickly as reasonably possible in a manner to ensure the confirmed instructions are dealt with in a timely manner;
- (b) handle all client's money: without delay; in an efficient manner; in a manner to ensure that it can be traced; according to the client's instructions; and, in the absence of those instructions by payment as soon as reasonably possible into the general trust account for the PRACTICE;
- (c) mark each file and sub-file clearly with a unique matter reference code and maintain the contents of the file in an appropriate manner and logical sequence;
- (d) keep all DOCUMENTS, letters and other information relating to the matter, including file notes and details of any undertakings given by the PRACTICE, on the file or so that they can be readily traced;
- (e) make sure that the status of a matter and action which has been taken in relation to it can be readily identified and confirmed;
- (f) make sure that all DOCUMENTS, including mail, received by the PRACTICE are viewed and allocated by authorised PROFESSIONAL PERSONNEL;
- (g) make sure that all DOCUMENTS including electronic mail or e-mail, sent by the PRACTICE and other DOCUMENTS signed by the PRACTICE are signed or authorised to be sent by PROFESSIONAL PERSONNEL;
- (h) where relevant, record the grant of legal aid, including the terms of the grant and any relevant financial limits, on the file;



- (i) nominate PROFESSIONAL PERSONNEL to supervise the handling of every matter;
- (j) provide for periodically reviewing files by the supervising PROFESSIONAL PERSONNEL for compliance with the PRACTICE manual and to ensure the matter is being handled appropriately; and
- (k) provide advice to clients for selecting and instructing independent barristers, expert witnesses and consultants, including procedures for;
 - (i) advising the client and obtaining the client's agreement in relation to selection; and
 - (ii) consulting with the client in relation to the cost of and payments to be made for obtaining the services of those persons.

3.3 Key Dates

The PRACTICE must make sure that key dates (such as limitation periods or court appointments) are recorded and relevant activities carried out.

3.4 Authority Levels

The PRACTICE must give appropriate levels of authority to PROFESSIONAL PERSONNEL such as authority for taking and accepting instructions, handling matters, viewing DOCUMENTS which are received and signing or authorising DOCUMENTS which are sent.

3.5 Progress Reports and Subsequent Instructions

The PRACTICE must give information to the client about progress of the matter and the current level of COSTS incurred in relation to given COSTS estimates, any grant of Legal Aid or changes to the grant and details of transactions using the client's money held on trust with the PRACTICE. This information must be given at agreed intervals or at other times as appropriate and contain any details reasonably required by the client. If subsequent instructions are taken in relation to a matter which, has already begun, the PRACTICE must comply with the requirements of section 2.

3.6 Variations in handling the Matter or COSTS

The PRACTICE must write to the client about any changes in the way the matter is being handled or in the way COSTS are to be charged. Where possible the PRACTICE must write before the change is made. If not possible, the PRACTICE must write as soon as reasonably possible afterwards.



3.7 Billing

The PRACTICE must send bills at times and manner agreed with the client. Bills should show details of the work done and, where relevant, disbursements incurred, as reasonably required by the client.

3.8 Changes in PROFESSIONAL PERSONNEL

The PRACTICE must implement appropriate hand over procedures and inform the client whenever there is a change in the PROFESSIONAL PERSONNEL having ongoing responsibility for handling or supervising a matter. Where possible the PRACTICE must inform the client before the change occurs. If not possible, the PRACTICE must write as soon as reasonably possible afterwards. The PRACTICE must also make sure the change is noted in its own RECORDS.

4. FINISHING A MATTER

.....

Section 4 of the Standard applies when a matter is finished.

4.1 Reporting

Where appropriate the PRACTICE must write to the client at the end of a matter, or when the retainer is terminated, about;

- (a) the outcome;
- (b) any further action the client should take, including obtaining further advice;
- (c) any time limits still relevant (such as for appeals or commencing litigation);
and
- (d) the file storage and destruction policy of the PRACTICE.

4.2 Accounting for Money and Property

The PRACTICE must account for all money handled on behalf of any person and must return original DOCUMENTS, unused trust money and other property to the person entitled to them (except for items which by agreement with the client the PRACTICE is to keep in safe custody, such as wills).

4.3 DOCUMENT Storage

The PRACTICE must make sure that items kept in safe custody are adequately secured and readily traced, and that a RECORD of all such items is maintained.



4.4 Matter File Storage

The PRACTICE must make sure each file is stored;

- (a) at least until any relevant limitation period has expired;
- (b) so that it is reasonably protected against loss or damage; and
- (c) so that it can be readily retrieved.

5. OTHER PROCEDURES

.....

5.1 Personnel

The PRACTICE must make sure:

- (a) all new personnel go through an induction process, which includes instruction about this Standard;
- (b) adequate RECORDS are kept of the qualifications, training and experience of all personnel; and
- (c) all personnel are given training sufficient for them to achieve and maintain a level of knowledge and competence that is sufficient to enable them to perform the functions of the position at a reasonably competent level.

5.2 Reference Materials

The PRACTICE must make sure that up to date legal references (including legislation) are readily available for use by PROFESSIONAL PERSONNEL. The references must be relevant to the areas of law governing the PRACTICE and those in which the PRACTICE offers services.

5.3 Procedures for Client Redress

The PRACTICE must:-

- (a) have (and must implement) written procedures for receiving complaints by a client in relation to the handling of a matter and recording details of the complaint and what action is taken by the PRACTICE in response to the complaint;
- (b) respond to the complaint promptly;



- (c) write to the client about what action has been taken or will be taken;
- (d) identify the issues raised by the client's complaint and, if appropriate, provide adequate redress to the client;
- (e) if appropriate, take action which will prevent (or minimise the likelihood of) the problem recurring; and
- (f) implement procedures for periodically reviewing the RECORDS created by the procedure that addresses paragraph (a) above for the purpose of implementing action to minimise the likelihood of similar further complaints in the future.

5.4 Technology Policy

The PRACTICE must, if it communicates with a client or others by electronic communications, implement a procedure for:

- (a) The use and authorisation or review of e-mails and DOCUMENTS sent with e-mails or delivered in electronic form.
- (b) Printing or storing of e-mails and DOCUMENTS sent with e-mails or delivered in electronic form.
- (c) The use of virus scanning and elimination technology.

6. DEFINITIONS

.....
In this Standard;

COSTS includes professional fees and all additional amounts of money charged to the client (such as disbursement) made by the PRACTICE;

DOCUMENTS include written material which, is recorded or stored electronically or by any other means;

PRACTICE includes:

- a legal practitioner practising on his or her own;
- two or more legal practitioners practising in partnership; and
- any part of a government authority or body or any part of a corporation or other business association or enterprise which, provides legal services.



PROFESSIONAL PERSONNEL includes legal practitioners holding a current practising certificate employed by the PRACTICE.

RECORDS include any information or data however it is recorded or stored (and **RECORD** means to record by any method).



QUALITY PRACTICE STANDARD COMMITTEE RULES

Concerning Accreditation under the QPS Scheme, Insurance Premium Discounts, Loss of Accreditation and the Resolution of Disputes

1 Definitions

“Approved Quality Practice” means an Applicant as defined in paragraph 3.1 of these Rules that meets all of the requirements of the Standard and is accredited in accordance with paragraph 4.

“Auditor” means the auditor appointed by the Committee from time to time to audit firms for the purposes of accreditation.

“Board” means the Quality Practice Board of the Law Society.

“Committee” means the Quality Practice Standard Committee of the Law Society.

“Consultant” means a person experienced in quality management or who has relevant experience.

“Experienced Practitioner” means a Practitioner who has five years post admission experience.

“Law Mutual” means Law Mutual (WA).

“Law Society” means the Law Society of Western Australia.

“Logo” means the logo approved by the Committee for use by an Approved Quality Practice.

“Practitioner” means a legal practitioner admitted to practice in Western Australia.

“Practice Manager” means a person who is employed by a firm of practitioners and whose responsibilities include the management of the firm's practice.

“QPS Discount” means the discount or reduction referred to in paragraph 7.1(b).

“Standard” means the Quality Practice Standard of the Law Society approved by the Law Society on 14 September 1998 and as amended from time to time.

2 The Committee

- 2.1 The Committee will comprise from time to time not less than 4 Experienced Practitioners, 2 Practice Managers and 2 Consultants.
- 2.2 A member of the Committee must not be a member of the Board.
- 2.3 The purpose of the Committee is to:-
- (a) Review the Standard from time to time.
 - (b) Administer the implementation of the Standard.
 - (c) Liaise with Law Mutual on issues of professional indemnity insurance and risk management for Practitioners.
 - (d) Promote the Standard and encourage Applicants to seek accreditation.
 - (e) Such other purposes and functions as the Law Society may delegate to the Committee.
- 2.4 The Committee may delegate its auditing functions to its Auditor.

3 APPLICATION

- 3.1 The following (Applicant) may apply to the Committee to be accredited as an Approved Quality Practice:-
- (a) A practitioner practising as a sole practitioner;
 - (b) A firm of practitioners;
 - (c) The Legal Aid Commission of WA;
 - (d) (i) Any department or section of a private company, or
(ii) Government instrumentality,
operating as a group of legal practitioners.
- 3.2 The Committee may levy such fees as it determines from time to time on an Applicant seeking and attaining accreditation.
- 3.3 The Auditor will conduct an audit of the Applicant's procedures in determining if the Applicant is complying with the Standard.

4 Accreditation

If an Applicant is found by the Auditor to be complying with the Standard then subject to payment of any fees and the Committee being satisfied that the Applicant ought to be accredited the Committee may grant accreditation to the Applicant for the period of 12 months subject to the Applicant, in the case of a sole practitioner being that sole practitioner, and in the case of any other Applicant not less than one member of the

firm or not less than one principal officer of any other Applicant continuing to be a member or members of the Law Society and complying with the Standard.

5 Logo

- 5.1 An Approved Quality Practice may use the Logo on its stationery and promotional material and the Committee will make available for use by the Approved Quality Practice a bromide depicting the form of the Logo.
- 5.2 The size of the Logo must be not less than 15mm nor more than 25mm in diameter unless otherwise approved by the Committee.

6 Continuation Audits

On paying the requisite renewal and audit fee and on the Auditor being satisfied that the firm is complying with the Standard the Committee may renew the firm's accreditation for a further period of 12 months.

7 PROFESSIONAL INDEMNITY INSURANCE DISCOUNT

7.1 Subject to paragraphs 7.2 and 7.4:-

- (a) An Approved Quality Practice may in its first year of accreditation receive from Law Mutual a 5% reduction in its professional indemnity insurance premium (PI Premium).
- (b) An Approved Quality Practice may in its second and subsequent years of accreditation receive from Law Mutual a 2.5% reduction in its PI Premium.

7.2 The discounts referred to in paragraph 7.1 will not apply if, after the date of accreditation but prior to the imposition of the PI Premium all of the following events occur:-

- (a) a claim is made against an Approved Quality Practice on its professional indemnity cover with Law Mutual;
- (b) the sum of \$5,000.00 or more has been spent on either payments of the claim or defence costs or both; and
- (c) if the claim arises from an incident that occurred after the date the Committee approved the accreditation of the Applicant as an Approved Quality Practice.

7.3 When an Approved Quality Practice becomes entitled to have its QPS Discount reinstated by Law Mutual (following a claim referred to in paragraph 7.2) it will become entitled again to the PI Premium discount referred to in paragraph 7.1(b).

7.4 Subject to paragraph 7.5, if an Approved Quality Practice attains accreditation between 31 March and 30 June in any year it may only commence to claim the discount under paragraph 7.1 in the subsequent insurance year commencing 1 July following the anniversary of the firm's accreditation.

7.5 The Committee may, following consultation with and advice from Law Mutual, waive the requirement for strict compliance *as to date of accreditation cited* in paragraph 7.4.

8 Discontinuance and Amalgamations

8.1 If an Approved Quality Practice ceases to practice law in Western Australia it will cease to be an Approved Quality Practice.

8.2 If an Approved Quality Practice changes its composition, then the Approved Quality Practice will immediately notify the Committee.

8.3 On a practice ceasing to be an Approved Quality Practice it must:-

- (a) immediately return to the Committee all bromides provided to it;
- (b) discontinue using or promoting the Logo;
- (c) cease using the term "Approved Quality Practice" when referring to itself; and
- (d) cease in any way promoting itself as an Approved Quality Practice.

8.4 If an Approved Quality Practice dissolves and a Practitioner from the Approved Quality Practice wishes to retain accreditation for their new practice, the Practitioner concerned may apply to the Committee for a transfer of the Approved Quality Practice accreditation. If more than one Practitioner from the Approved Quality Practice wishes to retain accreditation, the Practitioner may make separate application to the Committee

8.5 For the purposes of paragraphs 8.2 to 8.4 the Committee may:-

- (a) require an audit, as to the matters identified in paragraph 4, in order to determine if the new practice complies with the Standard and if it should be accredited;
- (b) levy on the new practice such audit fees as it determines in order to satisfy itself as to compliance with the Standard.

9 Disputes

9.1 Any Applicant aggrieved by a determination of the Committee may write to the Committee stating its reasons for dissatisfaction (**Complaint**) seeking a review of any decision made by the Committee.

9.2 The Committee will, on receipt of a Complaint, review its decision and invite the Applicant or a member of the Applicant to make submissions to the Committee before the Committee makes its ruling on the Complaint.

9.3 Any Applicant aggrieved by a decision of the Committee under paragraph 9.2 may refer the Complaint to the Board. The Board will consider the Complaint as if it were the body to make the decision. The Board's decision will be final.