



# The College of Law

## Continuing Professional Education Component

### Part 1: Work Experience Workbook

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## Introductory Note

Throughout this workbook there are reflective tasks and self assessment tasks. These are italicised. They do not need to be submitted for feedback, however you may find it useful to complete the journal, which can be found in the document 'Work Experience – Your Journal', to record your reflections and comments. This will in turn create a useful portfolio of experiences which you can use as a resource when making job applications and planning the next steps in your career.

## Module 1: Professional Skills in Practice

### Aims and Objectives

#### Aim

To develop legal interviewing, advising, advocacy, writing, drafting, negotiation and dispute resolution skills.

#### Objectives

This module is divided into 4 sections. At the end of the module you should be able to demonstrate the following skills:

- 1.1 Problem Identification  
Identify and diagnose the client's needs, interests, problems, objectives and priorities and help the client make decisions about legal matters
- 1.2 Fact Analysis and Research  
Analyse and evaluate facts, identify and research the relevant law and gather other information relevant to the client's objectives
- 1.3 Planning and Implementation  
Develop action plans and strategies to achieve the client's objectives, to keep the process open to new developments, information and ideas, and to implement the plan and conduct the strategies and tasks necessary to achieve the client's objectives
- 1.4 Oral and Written Communication  
Develop and maintain effective oral and written communication skills, including interviewing, negotiating, advocacy, writing and drafting and in doing so:
  - express thoughts, advice and submissions logically, clearly, succinctly and persuasively
  - draft accurate, clear and effective letters and documents
  - interact effectively with other professionals and agents.

### Relationship with the Coursework Component

During the Coursework Component of the College of Law's Practical Legal Training (PLT) Program, you are introduced to professional skills and are given opportunities to practise those skills in role-plays and simulations. The skills covered included:

- problem identification
- fact analysis
- advising
- interviewing and client engagement
- negotiation
- advocacy
- drafting
- problem solving
- strategy and design skills.

You may wish to refer to the following College of Law Practice Papers which are available online through the College Learning Portal and Lexis Nexis. Hard copies are provided to students enrolled in the Coursework Component. Please contact the College of Law Student Resource Centre if you have any difficulty in obtaining access to these papers.

### **All States**

Practice Paper S101	Plain Language Drafting
Practice Paper S102	Drafting Transactional Documents and Writing Letters and Emails
Practice Paper S103	Work Management for New Lawyers
Practice Paper S104	Negotiation and Dispute Resolution
Practice Paper S105	Interviewing and Client Engagement

### **NSW**

Practice Paper CR204	Pleas and Sentencing Options
Practice Paper A201	The Principles of Advocacy
Practice paper A202	Court Etiquette Procedure and Protocol
Practice Paper A203	Examination-in-Chief and Exhibits
Practice Paper A204	Cross-Examination and Re-Examination

### **QLD**

Practice Paper CR403	Conducting Pleas of Guilty in the Magistrates Court of Queensland
Practice Paper A401	The Principles of Advocacy
Practice paper A402	Court Etiquette Procedure and Protocol
Practice Paper A403	Examination-in-Chief and Exhibits
Practice Paper A404	Cross-Examination and Re-Examination

### **VIC**

Practice Paper CR303	Pleas and Sentencing Options
Practice Paper A301	The Principles of Advocacy
Practice paper A302	Court Etiquette Procedure and Protocol
Practice Paper A303	Examination-in-Chief and Exhibits
Practice Paper A304	Cross-Examination and Re-Examination

### **WA**

Practice Paper CR603	Conducting Pleas of Guilty in the Magistrates Court
Practice Paper A601	The Principles of Advocacy
Practice paper A602	Court Etiquette Procedure and Protocol
Practice Paper A603	Examination-in-Chief and Exhibits
Practice Paper A604	Cross-Examination and Re-Examination

## Introduction

This module focuses on the professional or "lawyering" skills with which every person seeking to be admitted as a legal practitioner should be equipped. When admitted you are given a licence to practise as a legal practitioner, which signifies to the public that you have the knowledge, values, attitudes and skills which you need to practise law competently and to assume responsibility, under supervision, for clients' matters.

There are certain skills which are fundamental to the work of lawyers in virtually all aspects of legal practice.

The first three topics, Problem Identification, Fact Analysis and Research, and Planning and Implementation are all related to the problem solving process which is at the core of legal practice. The last topic, Oral and Written Communication, is also fundamental to the work of lawyers in all contexts.

**Important Note:** As you read and work on these materials you should relate the topic to your unique work situation.

Although most of you will be working in the private legal profession, practices vary a great deal, from large city firms to small firms or those run by sole practitioners. You may experience different fields of practice, from general practice to highly specialised areas of law. You may be working in the CBD, the suburbs, other large urban centres, the country, interstate or overseas.

Many of you will be working outside private practice, for example in the corporate sector, for the Government or a Government organisation, or a community legal organisation. You may be a judge's associate. In these contexts, terms such as 'client', 'practice' or 'firm' may have a different meaning to those commonly used in private legal practice. You may not be directly charging a client for work which you do.

Whatever your particular work situation, there are common aspects of lawyers' work and the skills, methods and procedures used by lawyers in that work. You should consider your own particular work situation when reading these materials.

### 1.1. Problem Identification

The first step in performing work as a lawyer is to identify what is intended to be achieved by that work.

#### The Client

In private practice the "client" is usually recognised to be the individual, corporation or other organisation upon whose "instructions" you are performing work or carrying out "matters". However, even in private practice, the term "client" may have a broader meaning. You may be asked to carry out work by partners or other employees of the firm who are sometimes referred to as "internal clients". You may be working outside private practice and in your work the term "client" may have a different meaning from that generally used in private practice.

Once you have identified "the client", the next step is to identify what that client wants or needs. What are the particular characteristics of the client? What is the level of sophistication or knowledge of the client in terms of the legal services required? What are the client's expectations? Is it clear who the client is? When there is more than one client or potential client, is there a potential for a conflict of interest?

## The Problem

Once you have identified the client, the next step is to obtain an accurate and complete understanding of the client's problem and the goals they are seeking to achieve. This involves not just obtaining the client's definition of the problem, but also considering aspects which the client may not have identified or additional problems or goals which the client may not have considered. It also involves understanding all the legal, institutional and interpersonal frameworks in which the problem is set and all other relevant information e.g. economic factors.

The problem, needs and goals may have non-legal as well as legal elements.

Whilst you want to obtain as much information as possible, it is equally important to be able to distinguish relevant from irrelevant material.

The needs of the client and the nature of the problem itself will often change over time. As more information is gathered or as events take place, new problems may arise. You must be alert to such changes.

### Self-Assessment Task 1.1: Problem identification

It is important that you are able to demonstrate to yourself and others your ability to identify and diagnose clients' needs, interests, problems, objectives and priorities and to help clients make their own decisions about their legal matters.

*Consider the matters you have handled, observed or worked on during your work experience. Were you able to identify the client, the client's interests and the particular needs of the client? Are you able to describe the circumstances that caused the client to seek advice and the client's goals and expectations, both legal and non-legal? Did the client's problem and/or needs change over time and, if so, how?*

## 1.2 Fact Analysis and Research

Once the general nature of the problem is known, the next step is to gather all relevant information gained through interviews, correspondence, reports, documents, etc. Sometimes, as this information is gathered and analysed, the nature of the problem may change. Although fact investigation usually precedes legal analysis, some legal knowledge needs to be used in order to identify the relevant facts and information.

When the facts have been gathered and analysed, the legal issues can then be defined and, if necessary, researched.

### Self-Assessment Task 1.2 - Fact Analysis and Research

You must be able to analyse and evaluate facts, identify and research the relevant law and gather other information relevant to the client's objectives.

*Consider an example of a matter on which you have worked. What methods did you use to analyse the facts? What investigations did you undertake? What were the legal issues? What steps did you take to research the legal issues?*

You may wish to build upon the example you used in 1.1.

## 1.3 Planning and Implementation

As you are diagnosing a client's needs and investigating and evaluating the facts and legal issues, you will develop a range of alternative solutions and strategies. There will often be more than one possible solution or strategy. There may be non-legal options as well as legal ones. Your role is to think of all the possibilities. Sometimes the most successful strategy may not be the most obvious

one. The ability to be creative and to come up with different strategies for a client is often what distinguishes more successful lawyers.

All the alternatives must then be considered in consultation with the client. In comparing the alternatives, consider:

- the extent to which the plan will achieve the client's objectives
- the relative benefits and non-financial costs
- the probabilities of successful implementation
- the likely consequences of unsuccessful implementation, in whole or in part
- financial costs
- the time frame.

After each plan of action has been considered and the client has, in conjunction with you, determined a course of action, the next step is to implement the plan. This may involve:

- obtaining assistance/advice from a lawyer or other expert with particular experience, knowledge or skill
- deciding on a time frame for completing the plan
- managing the timing and implementing the plan
- continually monitoring and reviewing the plan, its implementation and time frame.

### **Self-Assessment Task 1.3 - Planning and Implementation**

Again, it is important that you be able to demonstrate to yourself and others your ability to develop action plans and strategies to achieve the client's objectives, keep the process open to new events, information and ideas, implement the plan and conduct the strategies and tasks necessary to achieve the client's objectives.

*Consider a matter on which you have worked or which you observed during your work experience. What alternative solutions and strategies were available? What process was followed to determine the particular course of action? How, if at all, has the plan been implemented, whether wholly or in part?*

You may wish to use the same example you used in 1.1 and 1.2.

### **1.4 Oral and Written Communication**

Effective communication is fundamental to the work of a lawyer. You may have an encyclopaedic knowledge of the law, but to be a successful practitioner, you must be able to communicate that knowledge effectively. Lawyers use written or oral communication skills in a wide variety of ways and in a wide range of contexts. Although communication skills are fundamental to the work of lawyers, lack of communication or poor communication are often given as reasons for dissatisfaction with lawyers. As a result, it is an expectation of employers that new lawyers have an excellent level of oral and written communication.

Since communication skills are so important in all aspects of lawyers' work, particular aspects of communication are considered in Module 2 - Work Management and Business Skills. Unit 2.2 Interpersonal Skills in the Workplace, looks at aspects of communication with others in your workplace. Unit 2.4 Communicating with Clients looks at communication from the perspective of client care, the provision of quality legal services and the avoidance of risk.

This unit looks at communication skills in the context of writing and drafting, interviewing, negotiating and advocacy.

Communication is used to advocate or persuade, to advise or inform, to elicit information, to establish legal obligations or effect legal transactions.

Much has been written about lawyers' communication skills and particular aspects of those skills. We have provided a selected list of references in the document 'Work Experience – Additional Reading' where you may find further relevant or helpful information. You may find other useful resources through your own research.

To be effective, communication should:

- express thoughts, advice and submissions logically, clearly, succinctly and persuasively
- recognise and respond to verbal, non verbal and cultural aspects
- be appropriate for the purpose of the communication and its intended recipient, whether the client, other professionals or agencies.

It is also important to be aware of the differences between oral and written communication, and how communication in each form is used effectively. A few important points to note are:

### **Oral Communication**

- Oral communication is an immediate, two way process; it is imperative to listen carefully to your conversation partner before responding. Failure to listen properly may result in you missing vital information and also losing the confidence of your client.
- Be aware of non-verbal clues both in yourself and in your conversation partner. Body language and eye contact (or lack thereof) can give you important clues and information which may not be apparent from the words themselves.
- Be conscious of the intonation and pace of your communication; both can be used to relax and gain the trust of your client.
- Use clear, plain language and if necessary, qualify what you are saying and seek assurance from your conversation partner that they have understood you and also that you have correctly understood them.
- Language which you may use in a social context, may not be appropriate in a professional context when speaking to partners, other lawyers, clients or in formal settings such as court.

### **Written Communication**

- As written communication lacks the real time spontaneity of oral communication, take advantage of this to plan and prepare your communication carefully to ensure clarity of expression and appropriate style.
- Remember that any written communication, including email, is a permanent, visible and authenticated record which can be referred back to and potentially used later in court.
- Be aware of the tone of your written language. You may naturally be more formal when writing a letter on company letterhead, but you should be conscious not to become too informal when writing email correspondence. Misunderstandings can easily arise from looser, more informal language or attempts at humour- always be aware of your audience and the aim of the communication when writing. You should also be aware that emails and email trails can easily be forwarded or copied and seen by other people without your knowledge.
- Never underestimate the importance of proofing your written work. Letters, documents and attachments should be re-read carefully before being sent, and you should also be careful to re-read your emails before hitting the send button. However pressed for time you may be, proofing before sending can avoid misunderstandings or embarrassment at a later date.
- Use a good dictionary when composing written communications and always check spelling, grammar and punctuation if you are not sure. Do not rely solely on spell check – words may be spelt correctly but be grammatically inaccurate.

## **Self-Assessment Task 1.4 - Oral and Written Communication**

Can you demonstrate to yourself that you communicate effectively both orally and in writing?

*Check a letter, document or other piece of written material which you have prepared. Analyse its effectiveness. Are the thoughts, advice or submissions expressed logically, clearly, succinctly and persuasively? Is it accurate and effective for its purpose and audience?*

*Consider a situation where you have used or observed oral communication skills in practice e.g. in an interview, negotiation, etc. What effect did the verbal, non-verbal and cultural aspects have on the communication? What specific techniques did you employ? How effective was the communication?*

## Module 2: Work Management and Business Skills

### Aims and Objectives

#### Aim

To enable you to understand and develop a range of systems, procedures and strategies for efficient and effective management, including:

- financial management
- file management, and
- personal management including interpersonal skills.

#### Objectives

This module is divided into five units. At the end of the module you should be able to demonstrate that you are able to display the following skills:

- 2.1 Time Management  
Manage your time, effort, resources, files, support staff, clients and competing priorities in a manner which will provide cost-effective and quality legal services
- 2.2 Interpersonal Skills  
Work co-operatively with support staff, other practitioners and consultants such as counsel
- 2.3 Work Management  
Adopt work procedures and habits which minimise risks and complaints
- 2.4 Communication with Clients  
Respond to the needs and expectations of clients with effective and efficient communication, collaboration and service
- 2.5 Financial Management  
Manage the financial aspects of your work including, if appropriate, billing clients' matters in accordance with all applicable regulations and the precepts of good practice, and meeting statutory and professional requirements in relation to clients' trust moneys and securities.

#### Relationship with Coursework Component

During the Coursework Component, you are introduced to basic work and management skills including:

- file management
- case management
- communications skills
- risk management
- trust and office accounting requirements
- awareness of basic financial information and systems.

#### Requirements of this Module

You should read the introductory notes which include reflective and self-assessment tasks. These are designed to help you test your own understanding whilst you are reading. Your answers are not required to be submitted for assessment.

In addition to the notes, you should read Practice Paper S103 - Work Management for New Lawyers. The following Practice Papers are also relevant:

**NSW**

Practice Paper AC201  
Practice Paper PR202

Solicitors' Accounting Records  
The Practitioner's Relationship with the Client

**QLD**

Practice Paper PR402

The Practitioner's Relationship with the Client

**VIC**

Practice Paper AC301  
Practice Paper PR302

Accounting Records for Law Practices in Victoria  
The Practitioner's Relationship with the Client

**WA**

Practice Paper PR602

The Practitioner's Relationship with the Client

## Introduction

Starting legal practice is not easy. In fact, it can be very daunting. You will be expected to assist the organisation for which you are working - whether a private legal practice or an in-house private or public sector legal department - in achieving its goals. In most workplaces you will be expected to contribute to the financial effectiveness of your organisation, which may be measured by fee income and profitability in private practice, or by meeting budget outcomes in an in-house environment. In both cases such contributions can be either direct or indirect and are achieved by using your time and resources efficiently.

Although most workplaces have systems which will help you to handle your work speedily and effectively, your own progress is very much up to you. As we discussed in Module 1, communication and presentation skills are vital. It helps to have a personal and professional development plan which you can build on as you progress.

This module focuses on your personal management and how you can develop your communication and other skills. The objectives are for you to be efficient and "productive" for your own career advancement, whilst you maintain a work/life balance and enjoy your work.

In Module 3, you will consider work/life balance issues that relate to this module.

**Important Note:** In Module 1 we stressed that as you read and work on these materials you should relate the topic to your personal work situation. This applies to all modules.

## 2.1 Time Management

As there are only so many hours in a day, the management of your time is a matter of great importance. The more effectively you manage your time, the more productive you will be.

Effective time management is also needed to help you to maintain a balance between work, leisure and other commitments.

Some lawyers are said to be 'crisis managers' jumping from one crisis to the next, with priority setting being client driven rather than controlled by the lawyer. If not addressed - and if time is not effectively managed - there may be reduced client satisfaction, a real potential for professional risk and loss of professional and personal satisfaction through increased stress.

Most lawyers are reasonably well organised: they could not function otherwise. They plan their work using time management techniques to increase billable time by setting targets for the amount of billable time to be spent on each client and increase client satisfaction by proper planning of their day-to-day workload. That also assumes planning and finding time for "non-billable" activities which are necessary for effective and efficient practice.

They recognise the following common time wasters:

- lack of planning:
  - failure to prioritise
  - setting unrealistic time limits
- lack of proper procedures:
  - failure to adopt routine procedures for routine matters
  - failure to utilise equipment and systems provided by one's employer to increase productivity and efficiency
  - disorganised files, documents and correspondence, electronic or hardcopy.
- failure to delegate or improper delegation
- failure in self management:
  - procrastination
  - over commitment
  - poor telephone or email handling
  - delay in billing and finalising matters

- poor communication with support staff and fellow professionals
- lack of punctuality
- too many meetings.

Effective personal time management requires the use of strategies such as:

- planning
- delegation
- self management.

## Planning

Well-organised lawyers:

- have a plan for each day based on what tasks have to be accomplished
- are on time themselves, thus encouraging others to be punctual
- have an orderly desk, a well organised office and work a full day.

As soon as you arrive in the office or last thing at night - whichever suits - set aside 15 to 20 minutes to plan the day. Your daily plan should take into account the fact that you will be interrupted during the course of the day. For the inexperienced, prioritising work can be very difficult. Do you telephone the client who wants to know what is happening in their matter, or do you do some research on a topic for the partner or senior lawyer, whom you are keen to impress? A suggested approach is to distinguish between *work which is important* and *work which is urgent*.

As Stephen Covey has explained, things which are *urgent* (either real or apparent) are not necessarily *important* (although they could be when lawyers are called on to assist clients in a crisis).

Covey tells us that *importance* is about planning and preparation, long term rather than short term, and being systematic and organised. At the highest level it is about strategy and how it is implemented. If we can find as much time as possible to spend on the matters which we identify as being important, then, ideally, we avoid being driven by crises and deadlines.

To do this you need to:

1. Have a clear understanding of how and why you and your practice decide what is *important* and how best to prioritise.
2. Decide what matters you will deal with and put those files and only those files on your desk for the day.
3. Divide the matters into two categories - those which require only cursory attention, and those which need significantly more time.
4. The temptation is to deal with the first category first to get those matters out of the way so more time can be spent on the others. This can be a mistake. Only deal with them first if they are important or urgent and, if possible, delegate them if they are not.
5. Establish when the work is required. If you are uncertain, check with the person who delegated the matter to you.
6. Decide roughly how much time needs to be spent on each matter in each category.

To plan each day:

- keep a 'to do' list at hand with the tasks to be done listed in priority order
- do the most important things when you are most productive - i.e. at the start of the day
- don't procrastinate. If the matter is complex you can start to unravel it through analysis and problem solving strategies. Don't put off tasks which are unpleasant. Putting tasks off makes them even more unpleasant, and non-urgent matters can quickly become urgent

- concentrate on doing one thing at a time. If you get held up or cannot proceed for some reason, switch to the next task at hand. Keeping a clear desk and an orderly office helps as you are not distracted by piles of files and other items waiting for attention
- cross off the items on a list as you do them. There is a sense of satisfaction to be gained as each item gets crossed off. Also, you are in control as you know where you stand
- add items as they arise during the day or which come to mind so new tasks don't get overlooked
- re-write your 'to do' list every day as the first planning step for that day and plan which tasks you can delegate to other lawyers, or to your secretary or support staff.

*Write a To-Do list for your next working day in a form which you find appropriate. If you haven't used such a list before, assess its usefulness.*

## **Delegation**

Effective delegation frees you from the routine tasks which can readily be carried out by others and leaves you more time to undertake the tasks which only you can undertake. Although you may be at a relatively junior level in your workplace, there still may be opportunities for you to delegate (as opposed to being delegated to!).

Whether you are delegating or being delegated to the following principles apply:

- ask courteously - don't issue orders
- involve your support staff in the process; it could be that they can do more for you than you anticipated
- establish goals. What do you expect the delegate to achieve? Explain the purpose and importance of each task and what constitutes effective performance. Ensure that you supply all the information necessary for the task to be performed
- be clear about the limits in responsibility, authority and accountability which the task will impose
- expect completed work from the delegate. You should provide only guidance and information
- be available for communication with the person to whom you delegate a task
- be supportive, provide training if necessary and backup when required
- ensure that the person to whom the task is delegated (and this could be yourself) has adequate resources, time, skills and guidelines to get the task done
- establish adequate controls for supervision. It is important to communicate with the person to whom you are delegating, so that you work together as a team
- set time limits by discussion and agreement at the time you delegate the task
- give credit where credit is due. This will enhance your working relationship.

Always remember that delegation of a task is not abrogation. The person delegating has the ultimate responsibility for ensuring that the task is performed correctly and on time.

*Do you delegate? If so, how do you ensure that the delegation is effective and productive? Have you had tasks delegated to you? Have you had difficulty in handling the task because of lack of communication, supervision etc?*

## **Avoiding procrastination**

A common problem for lawyers, particularly new lawyers, is procrastination. Procrastination usually arises in the following ways:

- **Not knowing what to do.** This can result in a failure to start a matter because it appears to be too weighty or complicated, there are insufficient instructions or the immediate way to tackle the problem is unclear. The remedy here is to make a start. Consider the gaps which are causing the block, seek assistance and/or analyse the matter and divide it into manageable parts.

In a way, most legal tasks can be thought of as a project, either small or large scale, or somewhere in between. Sometimes the steps or stages in the project will be easily identified, and depending on your employer and the type of practice area or matter there will often be standardised steps, procedures or checklists. Although sometimes only part of an appropriate procedure can be identified at the outset, as there is often a degree of unpredictability in legal matters, your first task will usually be to identify the key steps or stages.

- **Failure to grasp the nettle.** This can arise out of fear of making a mistake. Everyone makes mistakes. The only real mistake, however, is doing nothing about it. Ultimately this can lead to professional misconduct. No matter how unpleasant, the matter must be dealt with immediately. If necessary, seek assistance from your supervisor or another experienced person in the office. Even supervisors have made mistakes and usually have the experience and skills to solve the problem.
- **Being afraid to make a mistake.** Find out what you don't know, ask, conduct appropriate research, have a go and get someone to check your work. Procrastination can be much more dangerous than making mistakes.

The big problem with procrastination, whatever the cause, is that it has a tendency to paralyse. Other work is neglected as you worry about the stalled matters. This not only results in dissatisfied clients, it also affects your productivity.

*Have you put off dealing with something? Why did you find it hard to deal with straight away? What steps did you take to deal with it?*

## **Stress management**

Effective time management can also be used to avoid the problems of stress. The early stages of your working career can be highly stressful. As well as being on a steep learning curve, working in a new environment and coming to grips with work practices, you will be anxious to impress your employer and demonstrate your capabilities.

The stresses of your work environment and dealing with clients' problems (especially when there are strict deadlines and pressures of work) can be extremely demanding.

Always keep in mind that stress can have a positive side to it. Some people thrive on stress, and produce their best work when under pressure. Some people need some stress or pressure to motivate them into action.

However, being stressed can be extremely unpleasant and result in physical or emotional problems. For the new practitioner, stress can arise from:

- not knowing or being unsure of what to do
- being afraid to make a mistake
- being afraid, or not knowing where, to seek help
- too high a workload
- not wanting to say "no" - either to your employer/supervisor or to a client
- anxiety to please
- feeling a lack of control over the process or outcome

*What, if anything, causes stress in your work situation? How do you deal with it? Does stress have a positive side for you?*

## **Techniques for coping with stress**

The following are some of the strategies which can assist in coping with stress:

- **Personal insight and awareness.** Understand the signs of stress and the circumstances or issues which cause you to feel under stress. Not everyone has the same “stressors” or responses.
- **Effective planning and time management.** Failing to manage your time effectively and to plan and prioritise your work can lead to increased stress levels. Techniques for personal time management have been discussed earlier.
- **Seeking help.** Don't be afraid to seek help from your employer, supervisor or someone else in your workplace if you are uncertain of what to do, or, for any other reason, you are unable to carry out your work. Most employers/supervisors would much prefer you to ask for help rather than to put the problem into the 'too hard basket' or for it to become an even worse problem. Seeking help is not an admission of failure. If you do not feel comfortable about approaching your employer/supervisor, think of another person in the office whom you might be able to approach.

If there is no help available in your workplace, what outside sources may be available? Talking the problem over with another practitioner, or a friend, can be beneficial. The Law Society/Institute in your jurisdiction may offer services to its members such as:

- advice
- practice management advice and support
- counselling services.

If you have any difficulties during your work experience, please contact the College of Law. Check the website for contact details.

### **Keeping a balance between your work and your personal life**

During the early stages of your career, it is very easy to let work "take over" and for you to neglect other parts of your life. You may be working exceptionally long hours. Whilst you may be able to keep this up for a relatively short period of time, it is not beneficial in the long term. Try to leave time for regular relaxation and recreation. You and your work will benefit from it. See Unit 3.4 – Awareness of Current Issues in the Profession for further information about work-life balance.

### **Reflective Task 2.1 - Work Management and Business Skills**

*Could you demonstrate your ability to manage your time at work?*

*Could you identify at least two techniques that you have adopted or developed in your work placement to assist in the management of priorities and workloads and to avoid or cope with stress? What aspects of your time management have you found difficult and how can you make improvements?*

## **2.2 Interpersonal Skills in the Workplace**

Legal practice now exists in a competitive economic climate which has ended the concept of having 'a job for life'. There is a great emphasis on flexibility and skill development. Good interpersonal communication skills, or being an effective team member, are now criteria in employment applications, appraisals or promotion criteria.

Everyone should be aware of the need to be up to date, and to develop and promote their skills on a continuing basis.

Good interpersonal skills often boil down to how well you get on with other people and how they feel about and react to you; whether you are able to communicate your ideas to other people; and, equally importantly, whether other people feel that they can talk to you and that you understand them.

Having gained a great deal of legal knowledge, you, as a new lawyer, must make the best possible use of your interpersonal skills. How well you do so will determine how effectively you can put your legal knowledge to use.

Consider your interpersonal skills in relation to your work. Are you:

- responsive?
- able to accept direction and follow instruction?
- committed and able to initiate solutions to problems?
- capable of acquiring new skills and applying them to the job?
- cost conscious and able to exercise common sense?

### **Teamwork**

In most workplaces you will be part of a team - whether in a particular department, working on a particular case or in a small office. You can be an effective team member by:

- showing commitment, energy and enthusiasm
- organising resources, people and equipment
- communicating effectively
- delegating effectively
- influencing and motivating others to achieve positive results.

### **Dealing with clients**

Interpersonal skills are also important when dealing with clients. Studies of lawyers' clients indicate that the overwhelming complaint by clients is not in regard to the quality of the legal work but rather the lawyer's poor communication with them. You can maintain and develop good client relations by:

- having a responsive attitude
- providing timely and quality service, and
- listening and communicating effectively.

### **Improving your interpersonal skills**

Subconsciously, some people gradually improve their interpersonal skills through experience. You can, however, hasten the process by conscious effort such as:

- personal development courses, e.g. public speaking
- modelling others including supervisors and mentors, noting what achieves desired results and what doesn't
- putting into practice what appears to work, and
- continuously honing skills in all aspects of life.

### **Presentation**

The way in which you present affects other people's perceptions of you – be they clients, employers or your colleagues.

It starts with how you dress etc. and with your body language. If you feel unsure about how to dress for a particular workplace and client group, seek help. There are many people who can advise on appropriate dress codes.

It pays dividends if you consider how others, including clients and other firm members, perceive you. We might personally consider it vacuous to be concerned with our clothes, but, even if others have the same values, they can be judgemental in the way they see you.

*Consider your presentation and elicit feedback from others on your style. What do they think of the way you meet and greet people? Are you approachable in your dealings with others? Are you being caring of others? Do you prepare for meeting people?*

The way you present initially is determined by factors such as whether:

- your greeting is open or guarded
- your opening remarks are warm and designed to ease the tension, and
- whether you are properly prepared for the meeting with questions prepared and tactics planned.

Preparation for any meeting requires setting aside sufficient time to think through the issues and the questions you are likely to receive, then preparing the questions you wish to have answered and ensuring you have prepared answers for the questions you may receive.

If another person and/or negotiations are involved, it is necessary to think through and plan your tactical approach. Most people tend to be inadequately prepared for meeting their lawyer, yet they will be the first to criticise if they perceive you to be less than adequately prepared.

Good presentation comes from the feeling of inner-confidence which can only be gained through adequate preparation for whatever the meeting may bring.

*Jot down a simple action plan for you to work on within the next 12 months which sets out goals and strategies to be addressed to enable you to shine in your first year of employment.*

## **Performance appraisal**

Performance appraisals are a key part of any staff training and development program. By performance appraisal we mean the continuous process of communicating to the staff member what is expected of them and feeding back information about how well they are doing their work. This appraisal process can be informal and/or formal.

Informal appraisal is conducted on a day-to-day basis. It is spontaneous, giving close connection between the behaviour and the feedback on that behaviour. Examples of informal appraisal are a 'thank you', a 'pat on the back' or a favourable comment for a job well done.

There will be times when the job required has not been completed satisfactorily and so the person concerned has to be taken to task, preferably as soon as possible after the event.

This spontaneous appraisal related to specific tasks and activities, whether you are giving or receiving it, encourages desirable results and induces a 'right first time' attitude. Also, it enables the systematic or formal appraisal which may only occur once a year to concentrate on the 'big picture'.

Systematic appraisal is a formalised approach to evaluating performance and may be scheduled to occur semi-annually, annually, or on completion of a major project. It requires the employer to design a suitable form to assist the partner or supervisor in doing the appraisal process and provides the framework to:

- discuss the goals and the key result areas for you
- assess how you are performing on the job
- provide feedback and guidance on your performance
- identify and plan for training and development needs of both you and your employer
- improve communication by encouraging an open, constructive relationship and allowing you to discuss your aspirations and career plans and working with your supervisor in relating those to the employer's needs.

Some firms do not have a formal performance appraisal program but most, if not all, of the larger and more progressive firms will have set up such a program. You may well be the subject of an appraisal by a partner or work supervisor during your work experience.

*Is there a person in your workplace who you consider works effectively? What do you think makes them effective?*

Many employers/supervisors say that they find it difficult to appraise an employee's performance objectively and even more difficult to convey the assessment to the subordinate in a positive, constructive and non-upsetting manner. Yet without a formal program, the only feedback you receive is on an informal basis.

If there is no formal program, you can be misled into thinking that you are not progressing as you should or that you are not really doing a good job. You are also denied the opportunity of communicating your thoughts and aspirations and discussing where they fit into the firm's plans. You will also need some idea of your likely progression with the firm.

Specific key result areas that are likely to be evaluated by partners and other work supervisors may include the following:

- general competence and the development of legal skills
- communication and working relationship with supervisors, other practitioners, co-workers, clients etc
- client billing and debt recovery
- billable hours
- unbilled work in progress/disbursements.

*Does your workplace have a formal appraisal program? If they have one, consider the criteria and do a self-assessment in relation to your perceived performance against the criteria at this stage in your legal employment. If not, use your journal as a form of appraisal. Do a self-assessment of your perceived performance against the criteria which you believe apply in your work situation.*

### **Self-Assessment Task 2.2 - Interpersonal Skills in the Workplace**

*How do you communicate your needs to other staff? How effective are your communication skills? Have any problems arisen because of lack of good communication skills, either from you or towards you? Do you respond to the needs of other staff? Are you an effective team member? How do other staff members impact upon your ability to manage your work efficiently?*

*How would you communicate your work needs to another staff member, practitioner or consultant? How would they communicate their needs to you? How would you respond? Consider the effectiveness of this communication method. How might it be improved?*

## **2.3 Work Management - Part A**

In relation to the handling of files, lack of management skills is a major cause of claims for negligence. Two fundamental problem areas are missed dates and deadlines such as limitation periods or filing dates, and inadequate supervision and checking of documents for content, format, version etc. These are often due to non-existent, inadequate or non-compliance with systems or processes.

Proper file management is vital in legal work. It is also important for you personally because your efficiency in managing files will be considered by your employer who decides whether or not to continue your employment, and by your client when deciding whether to give you work.

In this topic the following issues and key concepts will be covered:

- opening files
- taking instructions
- engagement management
- maintaining file notes
- meeting time limits

- using check lists
- orderly file management
- using computers as an aid to work management.

Remember that as you read this material you should relate the issues to your own unique practice situation. Of course, in many legal practices file and work management is carried out as part of a larger electronic “practice management” system. Such a system will often integrate financial and time recording processes, and document generation, so that relevant precedents are linked and “called up” at the appropriate time. Email and diary systems may also be linked, as well as creation of file notes and correspondence, so that the system can capture all the necessary records for each matter.

But most systems, no matter how sophisticated, will still require human intervention – most typically at the point of entry of data or information – and legal practices which use these systems need to ensure that staff are trained, and understand how and when to use them.

But irrespective of whether a practice uses an electronic or manual system, or some combination, there are some fundamental principles in relation to file and work management which need to be understood. The following information assumes a paper based system is in place.

### **File management - opening a file**

Every matter has to have its own unique name for recording and referencing purposes. Each matter should have its own file.

File numbers assigned are usually sequential - i.e. numbered one after the other, within the practice. In a large legal practice which has separate departments for legal specialties or type of client, (e.g. private clients, commercial business, commercial litigation) or which has separate offices, there may be separate sequences of numbers set up to distinguish the matter number by department or office.

When you have taken instructions, you will usually organise a file to be opened. For a hardcopy, the matter name is put on the file cover and the paperwork to date put in the file. However it is no less important to clearly name and maintain electronic files and documents.

In most practices, the matter number will be allocated from the cross-reference record. This record is in number sequence. Against each matter number is recorded the matter name, date opened, the person who opened the matter and, where different, the person who will be handling the matter.

This cross-reference record can be a written record (in a book), but if the records are kept electronically, it can be entered directly into the relevant program so that reference is available throughout the firm or organisation by enquiry or search.

The matter number must be allocated without delay and be available to those people in the firm who may need to access that information, e.g.

- the finance department - to record time spent on the file from time sheets
- the solicitor starting to work on the matter
- support staff such as reception and mailroom, so that mail, calls or documents received can be directed to the appropriate persons.

Once allocated, the matter number then acts as a reference which can be entered on correspondence and accounting records such as courier's accounts, accounts for filing fees, etc.

*How are files opened in your workplace? What matter numbering system is in operation? Do you think it could be improved and, if so, how?*

## File covers

Information on the matter which needs to be readily available for prompt reference (particularly when drafting letters, file notes or answering a phone query) can be contained on the inside of the cover of a hardcopy file such as:

- client details including full name, address, phone numbers, fax number, email address
- other party's details
- other party's solicitor
- date opened
- billing arrangements, date of cost disclosure, whether cost agreement obtained, quote or estimate of costs
- significant dates, action dates, latest filing dates of commencing action, time limits applicable
- file audit notation with provision for entering the reviewer's signature and the date
- date billed
- date file closed.

With the advent of money laundering legislation, legal profession indemnity insurers such as LawCover in NSW also recommend that as part of the procedure for starting work for a new client, legal practices should also incorporate identity checking procedures to ensure that the client is who they say they are.

## Taking instructions

Forms for 'Taking Instructions' should be designed to suit the different types of matters in which the firm deals. Preferably there should be a separate form for each type such as conveyancing, family law, workers compensation etc. Producing an attractively designed form headed with the firm's logo and name and providing for answers to be entered against the questions applicable is preferable to starting with a blank sheet of paper.

In addition to promoting the efficient taking of instructions, every opportunity should be taken to create a professional image in the mind of the client.

The instruction sheet should provide for obtaining all the relevant information to open the file, to note any papers or documents supplied by the client and whether they are to be retained or copied and returned. If an estimate of the time before completion or some significant stage is given to the client, it should be noted. Billing arrangements agreed with the client, or whether such arrangements are to be determined at a later date, should be stated along with any other items discussed pertaining to the matter.

The sheet should then be signed or initialled and dated by the solicitor and when time is critical, the time should be entered on the form.

The instruction sheet is then a record of the information received and should contain enough details to open the file and commence the matter.

The instruction sheet also records the terms of the agreement between the client and the solicitor to commence the matter and in the event of a later dispute with the client, will provide evidence of what was discussed and agreed at that meeting.

*Is there an instruction sheet for all your matters? If not, in what type of matters would you find an instruction sheet useful?*

## Confirming terms of engagement

It is good practice to send a letter of engagement to the client confirming that the matter has been commenced and confirming, or informing the client about:

- who the contact person is and who will be handling the matter (if different)
- the reference (usually the matter number) for future communications
- a general description of the work to be done
- when the firm will next be in contact with them
- an estimate of costs (where applicable) (of course you must comply with the disclosure requirements laid down by the appropriate legal profession legislation).
- the matters required by legislation to be disclosed to the client on costs. You must be completely familiar with and observe the requirements for costs disclosure. These requirements vary in different jurisdictions. For example, see:
  - in New South Wales – Pt 3.2 of the Legal Profession Act 2004
  - in Queensland – Pt 3.4 Legal Profession Act 2007
  - in Victoria – Pt 3.4 of the Legal Profession Act 2004,
  - in Western Australia –Pt 10 of the Legal Profession Act 2008.

With the letter of engagement you should return any papers or documents supplied by the client which are not to be retained.

A letter of engagement provides the opportunity to thank the client for his or her business, commences the communication process, and provides the client with a written record of the matter. Some practices also record what they are not doing for the client, to avoid uncertainty.

A letter of engagement, particularly when instructions are given over the telephone, also confirms the retainer to act which is sometimes not clear and can also be a cause for negligence actions.

Confirmation in writing is also required when the firm will not act or will cease to act if certain events do not happen.

*For what matters does your work experience placement use a letter of engagement? If your workplace is not in private practice, is there a system for recording the initial requirements of the job?*

### **Maintaining file notes**

Many firms and offices encourage the making of file notes by having special forms. This ensures that certain basic details are contained in each note and that the form is distinctive enough, e.g. by the use of a particular colour, to readily identify it in the mass of filed paperwork. However, a file note does not have to be a printed form - the important thing is that there is a record kept of everything which happens in that matter. Do not use post-it stickers as file notes as the record needs to be permanently attached to the file.

A file note should contain:

- matter number
- matter name (optional)
- date and possibly time (where critical)
- the name of the solicitor or person writing the note
- the message or information recorded by this note
- signature or initials of the lawyer or person writing the note.

Telephone or personal discussions with the client and outsiders relating to the matter should always be recorded by means of a file note. This can be important if the outside party sends a letter or email relating to that discussion and their interpretation of what was said and possibly agreed to is different from the lawyer's understanding. A file note is also a permanent reminder of such discussions and can be vital if a dispute should arise in the future.

The file note form can also be invaluable for a new lawyer or someone taking over the file to work out where the matter is and to plan the next steps to be taken.

*Do you always make file notes? Have you been given a file which you have found difficult to handle because of lack of file notes? What are the benefits of file notes?*

## **Time limits**

You must have a system of recording significant dates pertaining to each matter, particularly the expiration of time limits in limitation matters. This information should be recorded in a prominent place on the file cover.

Other systems used are:

- manual review systems such as a file divided into calendar dates which have reminders in the need to review the file or to carry out particular steps in the matter. They are likely to be dates on which documents are due or actions to be commenced, particularly time limits, file reviews, client communication dates etc.
- electronic systems which record the required dates for review in the matter. The system then issues reminders for those items when the dates are reached.
- in some practices the diary or date review system can operate both at the level of the individual file and also as a centralised system, so that overall supervision is not dependent on the individual lawyer.

All systems are designed for good matter management but they also can assist in avoiding professional indemnity claims against solicitors for missed time limits, particularly in litigation matters. The increasing activism of consumers means that unless lawyers use file management systems more effectively to overcome the problem of missed time limits, the cost of professional indemnity cover will tend to increase steadily.

*Does your workplace have a file recall or review system? If so, do you find it useful? Do you make full use of it?*

## **Check lists**

Systemised check lists are useful for the same types of matters in which common procedures are followed - e.g. conveyancing, litigation, probate etc.

If check lists from stationery or software suppliers are used, they should be scrutinised to ensure that they are applicable to the systems unique to the practice. Generally, check lists cover the steps to be taken, documents to be lodged, payments to be made, documents to be checked, advices to be given, actions to be taken and their time limits etc. Electronic systems usually allow relevant dates to be added even when a standard workflow template is being used.

Each item on the list should have the date entered when the item has been done, and should be initialled by the person who has done it. Alternatively, the item should be marked N/A (if not applicable).

These check lists are particularly helpful to new lawyers, support staff and paralegals in that they list what has to be done and the order of doing them. They are also helpful to anyone taking over a file, and for the person responsible for the matter as they clearly indicate what has been done to date, by whom and when, and what is still outstanding.

*Is there a check list for all your matters? If not, in what type of matters would you find a check list useful? Prepare a check list for one of the matters you have handled.*

## **Orderly management of files**

Unless there is a system for orderly management it is easy to have an unknown number of unexploded bombs - files with actions not taken or documents not filed within the requisite due dates. These can be a potential professional indemnity claim with dire consequences for you, the law firm (and the profession).

Accordingly, you should have a system to ensure that:

- check lists are used in appropriate matters
- there is a recall system with specific responsibilities to ensure that the system is in operation at all times. Either you or the practice (preferably both) must have a system to remind you of the time to review or take action on a matter, or of approaching significant dates relating to particular matters.

Supervisors should regularly review at least the following:

- the length of time each matter has been in existence - from the date the matter was opened
- the length of time since any action in each file has been undertaken - from the last date time has been recorded on that matter.

The firm should have systems which ensure:

- the audit on a regular basis of some or all files (there should be provision on the file cover for noting when and by whom any file audit is undertaken)
- that a proper procedure is followed so that complaints can be monitored and that any complaints by clients, regarding dissatisfaction or perceived slow progress of their matters, are acted upon swiftly.

### **Closing matters**

As soon as a matter is completed, a letter of completion should be forwarded to the client. The matter should then be billed as soon as possible (if not already done) so that the matter can be closed. Some law firms close the matter once it is billed while others delay closing until the bill is paid. Which alternative is used may depend on the billings/recovery policy of the firm.

Most firms, however, have a systematic closing procedure which can cover both approaches. The aim of the closing procedure is to ensure that the matter is totally complete such as ensuring that monies in trust are paid to the client, the firm's costs are paid, documents are sent back to the client or placed in safe custody and that any unrecoverable disbursements are written off.

An efficient closing system also means that the files can be regularly removed, thus avoiding cluttered records and an over-full filing system.

### **Conclusions**

Effective file management is vital to successful practice as it encourages efficient handling of matters, incorporates risk management strategies and stops you waking up with the horrors in the middle of the night.

In handling a work load you should be using the following strategies in the initial stages of the matter:

- matter opening procedures
- instruction sheets and check lists, and
- a letter of engagement which sets out (at least) how the matter will progress, time spans, communication points and charging and billing arrangements.

In later stages of the matter ensure that you are maintaining proper file notes, have a list of critical dates and a procedure for regular communication with the client and appropriate file reviews. It is also important to have an appropriate closing procedure to ensure that matters are finalised, documents are secured and that costs and disbursements are recovered.

Select a file you are handling or have handled and critically assess your management of it. Audit the file using the following sample checklist. Remember, this is just a method to manage electronic documents consistently. Adapt the checklist as necessary to suit your workplace situation. If you do not have a file you have handled, consider a file you have access to.

1. Management of Files	Comments
(a) Is file appropriately labelled?	
(b) Are file documents kept in clear and logical order?	
(c) Are documents sequenced correctly?	
(d) Are file notes, correspondence etc included as necessary?	
(e) Are all original documents undamaged (e.g. no staple holes etc)?	
(f) Is file neatly maintained / presented?	
2. Content of File	Comments
(g) Are instructions clearly recorded?	
(h) Have all essential steps in the matter been appropriately documented including terms of engagement and costs disclosure/agreement?	
(i) Are non-correspondence documents correct as to: <ul style="list-style-type: none"> <li>o form</li> <li>o content</li> <li>o execution and attestation?</li> </ul>	
(j) Have billing and accounting been recorded?	
(k) Is advice given clearly recorded?	
3. Compliance with Deadlines	Comments
(l) Have essential time limits as to key documents or key steps been complied with?	
(m) Have responses to correspondence and telephone communications been made in a timely and courteous manner?	

## 2.3 Work Management - Part B

### Using Technology Effectively

Technology has had a major impact on legal practices. You are probably required in your work to be able to create and manage your own documents, correspondence, emails, memoranda and the like.

Computers increase productivity by enabling you to create and change documents electronically, use templates and provide a quick and effective means of communication, document transmission and exchange. In addition, there are many systems that assist in the management of legal businesses such as for accounting, document management, time recording, workflow tracking, and knowledge and information management systems.

Costing and billings are more transparent, precedent retrieval and legal information are available from your desktop and the firm's marketing program may become more focused and efficient.

Technology is also now used commonly in the preparation and conduct of litigation and in the processing of and sharing of information in conveyancing and commercial matters, such as the use of deal rooms in mergers and acquisitions.

As a new lawyer, you will be expected to use such systems and to learn quickly how to use new technology.

### Online legal research

Most legal research can now be conducted online using public or commercial databases to search for and retrieve information. During your practical experience you will probably use a range of tools to retrieve precedents and legal opinions. Employers expect new lawyers to have good research skills and to be fully familiar with online legal research techniques.

### Advantages of online legal research

As well as being readily accessible, online information is generally more current than in hard copy but in using websites and databases it is always important to check the date on which the online information was last updated.

- electronic data is also much faster and more convenient to search for example: you may search on words not covered in a traditional index - e.g. all the cases decided by a particular judge
- you may combine search terms
- you may search simultaneously material contained in many databases or in many volumes of printed material
- once a relevant general or main index term is selected, much irrelevant material may be eliminated.

### Disadvantages of online research

The computer does not think like we do. It recognises words and interprets your search request absolutely literally:

- it may be difficult to distinguish between reliable and unreliable sources
- you may be overwhelmed by the amount of information
- there is considerable skill in formulating the search request. The general topics listed in an index may not make good search terms. One must try to anticipate which words the relevant documents will contain, not just what they are about
- you can have a false sense of security. It is much easier to know what you have found on the computer than what you have missed.

*Do you use online legal databases in your work? Are you confident using them? If not, seek help so that they become an effective tool for you by ensuring that your search is complete and online time is minimal.*

## **Litigation support**

There are a number of effective litigation support systems used in law firms. These may assist in the following ways:

- in conducting discovery, the preparation of a list of documents can be made quickly and easily as the computer will sort the documents into any order and can be used to analyse the other parties' lists to ensure completeness and to assist with inspection
- documents can be scanned - this is now often required by the courts in complex cases
- cases and documents can be down loaded onto a disc or movable memory device for use in court or at home, or with a laptop or PC
- information can be quickly retrieved from the litigation support database when a witness is giving evidence. This can be of huge benefit in cross-examination or in preparing submissions.

## **Communications**

You are probably very familiar with the advantages and disadvantages of using email. Whilst email can become a real time saver and can be retrieved at any time, it is easy to become overwhelmed by the number of emails to be dealt with daily. A good system for managing email is essential and you should try to avoid dealing with emails that distract you from doing more important tasks.

Care also needs to be taken to avoid the risk of confidential communications, or inappropriate material being included in emails. There are many examples of internal emails from law firms being distributed around the world.

There are many other ways in which technology can be used to improve communication internally or externally such as in the uses of meeting organisers, web-conferencing, messaging and the like.

## **Document transmission and exchange**

The movement of documents to and from other solicitors or clients can be facilitated by:

- sending or receiving the document by email attachment
- scanning the document
- using document collaboration systems.

## **Electronic creation of documents**

Documents are the bread and butter of legal practice. The electronic creation of documents allows them to be prepared and kept much more easily than was the case with paper documents. Some of the electronic tools that may be used are:

- precedents or templates so that the new document only requires the variable information to be entered
- spell checkers, tables, annotations and revision marking
- style and presentation tools - e.g. type fonts, page numbering, headers/footers, insertion of logos, use of colour etc
- the ability to print multiple copies or distribute electronically
- collaboration and workflow management systems that enable authors and reviewers to expeditiously review a document with subsequent ease of change and rearrangement. Many legal authors can make the required changes themselves, even if they do not have expert typing skills

The ease with which documents can now be created does not always lead to less paper or less documents. There is a tendency for documents to be of unnecessary length or for there to be unnecessary duplication. Care must also be used in adapting documents and in managing different versions of documents. Errors in a precedent or template can be replicated many times over. When reusing documents, it is all too easy to inadvertently leave in the wrong name or date, which can be very embarrassing. It is also still essential to always ensure that a precedent used is appropriate to the particular circumstances.

### **Financial management - accounting**

Accounting in legal practices has many different aspects - keeping matter ledgers, trust ledgers, time recording, billing, debtor ledgers etc.

Electronic time recording has resulted in law firms reporting billing increases of up to 40% following the commencement of full time recording which is possible under a computerised system. This is because a system which computes bills from diaries, memory and the matter file tends not to capture all the time spent on a matter.

Even if time recording is not used for billing purposes, for example in an in-house corporate or public sector legal practice, or a private practice or practice group which uses fixed fee billing, time recording allows the practice to track how long it takes for certain types of work to be done. This can be very important when considering whether work is being done efficiently and effectively, when assessing profitability, for allocating the correct resources (including the number and level of experience of staff) to certain types of work.

In relation to computerised ledgers etc., it is possible to have an up to date ledger at any time which clearly shows the details of disbursements paid and time costed to the matter to date.

Transfers from trust to office for paid disbursements can be batched each day, minimising paperwork and banking charges. The ability to review and edit trust accounts on the screen facilitates the issuing of trust account statements.

Computer-assisted billing generates a draft bill on request or on a nominated date and reduces the time spent on preparing bills. Prompt billing ensures a positive cash flow.

### **Practice management**

Practice management software provides information to assist the owners or senior managers to manage their practice.

This information usually includes details as to:

- matters billed
- matters paid
- unpaid disbursements
- individual and firm chargeable hours
- individual and firm unchargeable hours
- premiums and discounts
- aging of debtors - 30, 60, 90 and over 90 days
- aging of work in progress etc.

### **Internal management**

Legal practices and other organisations often keep a number of other records on their computer system. These include precedents, opinions, advices, unreported judgments, training programs, continuing legal education seminars and attendances, library catalogue, preferred referral sources such as barristers, valuers, doctors, expert witnesses etc.

*What internal management systems are computerised in your workplace? Is the information readily available? What other computerised information would you find useful in your work?*

## **Marketing**

Technology can also assist with marketing functions by enabling a database to be set up which lists any information which might assist in the growth of the practice. There are many customer relationship management systems on the market.

A common database may contain information on:

- all current clients
- targeted potential clients
- lost clients
- marketing strategies including successes and failures
- types of clients and business activity
- referral sources
- likes, dislikes and special needs
- number of matters billed and total billings
- other areas of law in which clients may need assistance.

The idea is to build a profile of the client, which is available to those who service the client or are marketing to the client. Some information may have restricted access. The database comprises information entered at the time of taking the first set of instructions and is added to as the relationship progresses.

Various comparisons can be made to discern a performance trend from an analysis of information including:

- ranking client by matter hours
- ranking referral sources
- ranking by fees earned
- billable time by fee earner
- any other useful information.

## **Conclusion**

Technology is vital to success in legal practice. Meeting clients' expectations for speed and the right result at the right price means that the delivery systems must match the excellent legal advice and problem solving given by you. Computers can help here through efficient research, file management and correct document preparation and presentation.

Likewise, legal practices can only be well managed and grow with the assistance of practice management information and practice development technologies.

In this topic you have covered the main technologies currently in use in legal firms. Use them effectively and ensure that your skills are up-to-date.

## **Reflective Task 2.3 - Work Management**

*How highly would you judge your ability to adopt the types of work procedures and habits which would minimise risks and complaints?*

*To what extent would information technology impact on your skills?*

## 2.4 Communicating with Clients

The legal profession always has been and remains a service industry. Lawyers and their clients have become increasingly aware of the importance of quality in the delivery of legal services.

Clients, be they government organisations, multi-national companies, partnerships or individuals, are all represented by a human face. It is consequently worthwhile recognising the communication skills required by modern lawyers and by you, tomorrow's lawyers.

Perception plays an enormous role in the client's mind. A client may seek the services of a lawyer because of his/her reputation and experience. However, once the lawyer is retained you will find in practice that provided the lawyer achieves the result within a given or reasonable time and at a reasonable cost, and communicates effectively with the client, the client will be happy with the lawyer's services.

Communication is a fundamental issue and the client should always remain informed as to the progress of the matter. A simple way of achieving this is always to send your client copies of correspondence sent to you and sent by you on your client's behalf.

It is worthwhile considering clients' expectations, and what affects clients' attitudes.

The things which give rise to complaints about lawyers are:

- delay
- lack of communication - specifically failing to return phone calls
- costs - lack of disclosure and/or costs exceeding the anticipated amount.

Three short solutions are:

- always return phone calls and emails without delay – never leave a call unanswered
- always keep the client informed as to the progress of the matter
- always disclose all anticipated costs and keep the client informed as to any changes in the likely costs.

Your client has chosen you or your firm for whatever reason. The client wants to feel that he or she has made the right decision in engaging you. You can invariably resolve an issue providing you keep up the dialogue.

Whether you are working in a small firm, a large firm, the corporate environment or other workplace, your abilities will be the same. Your charge-out rate, your clients and their perceptions and possibly your own perception of yourself may change, but this will not affect your competency in any significant way.

### Handling complaints

Handling of complaints is an important aspect of client care. Only a small proportion of clients will actually make a complaint. The disturbing fact is that for every one client who complains to you there are potentially almost three hundred people who hear bad reports about you or your practice.

When particularly dissatisfied, the complainant may take the complaint to the Law Society/Law Institute or, in some jurisdictions, the Legal Services Commissioner.

It is an unfortunate start to a career in the law when a newly admitted practitioner is faced with dealing with such a complaint, particularly in the first year of practice. There are even situations where students of law have been faced with complaints whilst working as legal clerks.

## Avoiding complaints

The complaints usually arise out of small incidents. Sometimes they may be the result of matters which have not been handled properly by another person and passed on to you. Whatever the cause, it is a salutary lesson and an unhappy introduction to practice.

It is imperative to avoid having complaints levelled against you. How can this be done? The key to success is not just legal knowledge but business-like habits. Some of these habits have already been discussed.

**Don't let matters sit.** It is extremely easy for a newly-admitted lawyer, given a new matter or handed a matter previously handled by another lawyer, to let it sit.

This is particularly the case when the matter is an area in which you have not practised before. It is very easy to do nothing and the longer nothing happens, the more likely it is that problems will arise and a complaint will be levelled.

Set aside a time once per month or at least once every two months to have a file review.

This involves you going through every file and taking some action on it.

You may find that correspondence has not been answered, statements have not been filed, clients have not been contacted etc. On each file, some action should be taken.

This is easily said but in reality you may not be able to do what is required - the most common reason in your early career will be that you do not know exactly what to do. If you cannot find out what to do by asking your supervisor, or from resources such as the College of Law Practice Papers, you should hand the file on to another solicitor, your supervisor, brief a barrister, ask a friend, anything to get the matter off your desk.

If left, the matter will turn into a bomb and in due course the bomb will explode, making you subject to criticism by your employer and to complaint by the client.

It is very unfortunate, if you are working effectively on the majority of matters, if your worst file comes to the attention of your employer, as this will colour your employer's assessment of your competence.

Many practices have systems to avoid this type of problem arising but if this is not the case, you can have your own system. Some examples include:

- arranging a system with some of your colleagues in your firm or office where you give them your 'too hard basket' and they will give you theirs. You will most frequently find that this system works because your colleagues will look at the matter in a different light and will come up with some useful suggestions. It is often surprising how someone else's 'too hard basket' seems simple to fix
- subject to not breaching client confidentiality, calling up a lawyer outside the firm or office, with whom you can swap or discuss your 'too hard basket' if you do not have colleagues to whom you can turn.

If none of these methods is appropriate and you cannot deal with the matter yourself, bring it to the attention of your supervisor. It is better for you to bring it to the supervisor's attention, before someone else does. Invariably, you will find that the matter can be resolved. There are few problems in law that can't be fixed, provided they are addressed in time.

**Keep your client informed.** This can usually be achieved by telephone calls and forwarding copies of correspondence received or sent. No matter how demanding or difficult you may

perceive your client to be, always pick up the phone and talk to him or her. You will find that the client will be happier (or at worst, less dissatisfied) if you keep up the dialogue. It is especially important to keep the client informed as to costs and any changes in the anticipated costs.

**Keep a useable trail.** Make sure you keep file notes of what has happened in a file, and where appropriate, confirm your advice or instructions in writing to your client. Not only is this a good work and file management practice but also it assists good communication with the client.

### **Self-Assessment Task 2.4 - Communicating with Clients**

*Could you demonstrate your ability to handle clients' matters in a manner which maintains client satisfaction and minimises risk?*

*Consider a matter which you have been handling. What techniques did you use to maintain client satisfaction? What aspects could you have improved? What were the particular risk factors? What steps did you take to minimise those factors?*

## **2.5 Financial Management**

During the Coursework Component, of the College's PLT Program, you will cover the statutory requirements in relation to costing, trust accounts and basic bookkeeping procedures.

This topic covers the compliance with those statutory requirements in practice and financial management systems.

The topic is of considerable importance because law practices need to run as a business in order to survive. You need to understand what is involved so that you also can survive. The success of a firm will depend on the structure of the billing policy, including charge out rates, time recording and recoveries and how productivity is measured and monitored. Productivity must be a team effort and everyone needs to contribute to profits.

Effective financial management is no less important outside the private legal profession. In the public sector, there has been an increasing emphasis on cost effectiveness and maximisation of resources. In the corporate sector too, financial effectiveness is necessary for commercial viability and to provide a return to shareholders.

In whatever field you are working, you need to understand how the organisation for whom you work is managed financially. In this section, we will highlight the most common financial management techniques.

In a firm, it is likely that you have been given a budget and a charge out rate as part of the firm's budgeting procedures. In other organisations your salary and other costs of employing you will be included in a budget. How and why this has happened will be explained in this topic.

Some lawyers find this financial monitoring daunting.

The need to meet a budget can create a great deal of pressure. Whether you are able to meet your budget will depend on how realistic the budget is, your level of experience, your skills in time recording, the amount and nature of the work delegated to you and the time required to be spent on non-chargeable work.

We will now examine the following issues:

- costing
- how law firms charge including lump sum and hourly rates
- capturing time - time recording
- billings and disbursement recovery
- receiving payment
- measuring productivity.

As you read this material, you should relate the issues from each topic to your unique work situation.

If you have not completed the Coursework Component, you might wish to read Practice Papers:

**NSW**

Practice Paper AC201  
Practice Paper PR202

Solicitors' Accounting Records  
The Practitioner's Relationship with the Client

**QLD**

Practice Paper PR402

The Practitioner's Relationship with the Client

**VIC**

Practice Paper AC301  
Practice Paper PR302

Accounting Records for Law Practice in Victoria  
The Practitioner's Relationship with the Client

**WA**

Practice Paper PR602

The Practitioner's Relationship with the Client

If you have already completed the Coursework Component, you might wish to review these papers.

**Pricing and charging for legal services**

Client charges not only cover the actual time spent on a matter, but a proportion of the firm's expenses and any cost for the recovery of disbursements paid on behalf of the client. This may be a predetermined fee or a proportion of the fee earner's hourly rate.

In earlier times, solicitors commonly charged according to a fixed statutory scale. In some matters, not covered by the scales, particularly commercial matters, solicitors charged on an hourly rate. However, in a number of jurisdictions these scales have been largely abolished or restricted and solicitors are required to disclose the basis of the costing for their legal services.

Where scales do not apply, lump sum costing using the old scales as a guide is still a costing system used by some solicitors, particularly in conveyancing. However, some solicitors are charging less than the old scales as a marketing initiative and to compete with conveyancers.

Other solicitors favour hourly rate costing but may apply a 'common fee' approach to costing some types of matters, e.g. a standard will or a power of attorney, to meet market conditions.

With proper time-recording procedures, the hourly rate method becomes a matter of simple arithmetic, e.g.

$$3 \text{ hours} \times \text{a charge out rate of } \$250 \text{ per hour} = \$750.$$

Whether this can be charged will also depend on any costs agreement or the cost arrangements disclosed to the client at the time of matter commencement.

**Determining an hourly rate**

Partners work out hourly charge rates for all partners and fee earning staff. A fee earner is anyone in the firm whose work is directly charged to the client.

Charge out rates for partners and senior lawyers will be higher than for junior lawyers, as they can produce a result the client wants in a shorter time. For example, partner charge out rates may be \$200 - \$600 or more per hour and junior solicitors in the range of \$150 to \$300 or more per hour.

Set out below are some formulae for working out a charge rate. In doing so partners take into consideration how many chargeable hours they have to offer to clients and the cost to the firm in providing the service. They then have to look at what their competitors are charging and what their clients can afford to pay.

An example:

Two practitioners start a new practice. They will need to spend time on administrative work, on networking in order to build a client base as well as completing as much chargeable work as possible. They want a 'take home' pay of say \$135,000 each in the first year. They each hope to work 7 billable hours per day and gross \$900,000. They are aware that overheads are likely to be 70% of gross billings.

To work out their annual budget, they need to calculate the number of billable hours per year.

Assuming that they want 4 weeks annual leave, and allow for 2 weeks public holidays and 5 days sick leave, then they can each only work for 45 weeks per year. With a total of 14 billable hours per day they have a billable hours total each week of 70 hours. Multiply this by 45 weeks and there is a total of 3150 billable hours available per year.

With gross billings of \$900,000 needed to achieve the desired income and pay the anticipated expenses, they need an hourly charge out rate of \$285 each to achieve their minimum goals.

They then have to decide whether this hourly rate is competitive or whether it is likely to meet with some client resistance.

This sounds fine in principle, but they need to keep the work coming in to generate these costs and fluctuations do occur with variations in the economy. Sometimes the average billable hours target may be hard to achieve, meaning either a loss of income or an extended working day to cope with the administrative responsibilities and marketing initiatives.

They know that their overheads are a continuing reality, and many do not vary according to the volume of work generated. They may find that they have to increase their hourly rate which is a business decision made in the light of the market forces affecting their particular practice.

This is the simplest situation and most practices will require the more sophisticated approach outlined below.

### **A cost setting process**

Set out below is a summary of a suggested process for setting cost levels which is contained in the revised *Costs Guidebook* 6<sup>th</sup> Edition issued by the Law Society of New South Wales in October 2010. This process is of general application. You could also refer to your local Law Society/Law Institute if you require further information.

This process applies to a firm with fee earning employees, perhaps like the firm for which you are now working. If you are working outside private practice, the process of setting a budget is very similar.

#### **Step 1: Determine expenses**

Partners work out the total expenses of the practice for the next financial year. This covers all overhead expenses such as rent, telephone, office supplies, depreciation maintenance, insurance etc. It also includes the expenses of any staff who are not fee earners such as receptionists, accountants etc. Expenses include all the expenses shown in the firm's accounts for the last 12 months with each item adjusted for inflation or for other estimated increases, or (possibly) savings.

They also work out the actual employment cost for each fee earner - this will be their gross salary (or for a partner a notional salary) plus superannuation, holiday pay and the like and other on-costs such as workers' compensation insurance, payroll tax, fringe benefits tax etc.

This fee earner information, as well as being part of the total expenses, is kept available for use later in the calculation.

### **Step 2: Deduct employment costs**

From the total expenses in Step 1, they deduct the total actual employment costs of all fee earners. The balance will then be the estimated total expenses of running the firm for the next 12 months. Most of them will apply even if no fees are received from clients.

### **Step 3: Allocate overhead expenses**

They allocate overhead expenses (Step 2) over each of the fee earners. If this is not easy as there is a wide range of different fee earning capacities, they apportion the total overhead expenses according to the fee earners' actual or notional salaries. Therefore partners would normally bear a larger proportion than employees.

### **Step 4: Calculate required gross fees**

They calculate the gross annual fees which each fee earner must generate to break even. This means adding the proportionate share of overhead expenses (Step 3) to the actual employment costs of each fee earner noted in Step 1.

### **Step 5: Calculate the hourly expense rate**

They then calculate the hourly expense rate for each fee earner, i.e. divide the gross 'break even' fees for each fee earner (Step 4) by the annual billable hours target for that fee earner.

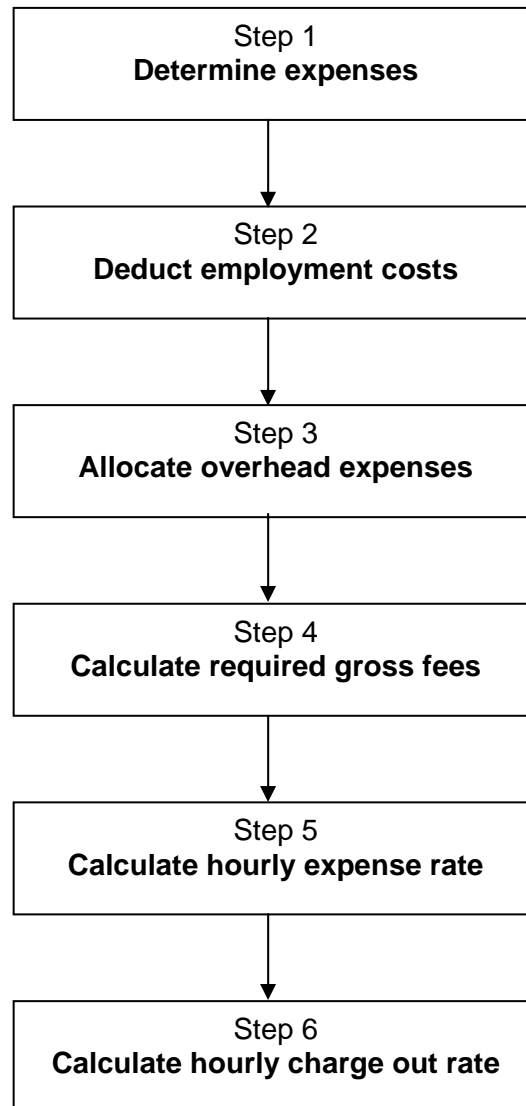
Setting the target is another problem. Some fee earners, especially partners, may have administrative responsibilities, or are involved in other activities such as attracting clients, and so would expect to bill fewer hours.

For an employed solicitor a target of say, 6-7 billable hours per day may be appropriate. In a year of 45 clear weeks that would make 1350-1575 billable hours per annum.

### **Step 6: Calculate the hourly charge out rate**

Finally they calculate the hourly charge out rate for each fee earner. This should also involve adding a margin to the hourly expense rate (Step 5) to calculate the charge out rate.

The added margin may represent some return on the partners' investment, will help to cushion any advance miscalculation of budget, and can add to reserves needed for investing in new technology, expertise etc.



*Calculate the hourly charge-out rate. What is your hourly rate? Do you think it should be higher or lower? Why?*

### **Chargeable hours**

A range of 1200-1575 hours per annum is normal for employed solicitors - this would represent about two thirds of their actual time. This allows the lawyer to do non-chargeable work, including general administration, some pro bono work or to assist in the general development of the firm or attend to continuing education needs.

Sometimes it allows for lawyers to actually discount their services to the clients. This situation may arise where there is an agreement with the client to work for less or in a tender situation where a volume of work is promised. But working at a discount can be disastrous because, as seen earlier, it will be more difficult to work at a profit as more work must be completed to meet budgets or more hours worked to achieve the same result.

Some junior lawyers feel that they cannot justify charging the client for the actual time they spend on the work because they feel inexperienced. Accordingly, they do not capture all the time on time sheets.

This is a mistake for two reasons:

- either, they are not credited by their partners with the amount of time they are spending at work or are spending inordinate hours at work to make up for the non-charged time, or
- the partners are responsible for dealing with the client and for profitability issues and it is their decision as to what time should be written off.

Also the partners need to know whether you need help either through training or resources to work more productively.

*Do you have trouble meeting your budgeted chargeable hours per day? If so why? Can you do anything about it?*

### **Time recording**

Time recording brings together the hourly rate and chargeable time and is essential for productivity. You are probably familiar with time recording procedures such as accounting for every 6 minute unit of the working day, and allocating it to a particular client or to non-chargeable time. There are other variations to this system.

Some commentators say that a good time recording system should have a number of features:

- it should provide for entries as you go
- it should have columns for matter number, matter name, code, time units for each 6 minutes (a minimum of one unit should be recorded against each activity even if it took less than 6 minutes), narration for brief particulars
- it should distinguish between chargeable and non chargeable time, and
- it should have a system for collection, posting and monitoring of time sheets.

*If you have a time recording system, does it meet the above recommendations?*

Entries on a time recording sheet are made either on a paper basis or through a computer system. It is recommended that entries are made 'as you go' rather than on a daily basis as it is too easy to forget work you have completed.

After your time sheets are given to the accounts department in a manual system, or retrieved under a computer system, your time spent in dollar terms is posted to the client's ledger for that matter. The time record and the ledger account should also show a brief description of what was done so that at the completion of the matter, the bill can be readily prepared from the information in the matter ledger and available for partner review.

Most firms send accounts to their clients progressively rather than waiting until the end of the matter. This enables clients to budget for costs as well as knowing what their legal expenses are as they go and saves them from finding out until too late that it has cost much more than they anticipated. In this latter situation they are likely to delay payment of the whole bill or quibble over the charges.

If you wait until the end of the matter, the bill should be sent immediately, when clients are prepared to pay or are appreciative of the service you provided.

Work completed in a team situation needs to be recorded as well as work done as part of your supervisory role of others. Different fee earners with different charging rates in a team working on the same problem will charge the client at their particular rate.

Recently, the concept of time recording as the fundamental basis both for managing lawyers' workloads, and charging clients, has been criticised both by regulators and the judiciary. Criticisms include that time recording:

- leads inevitably to stress (especially for younger lawyers) when it is used as the main measure of output or value for their work

- leads to inefficient work methods, because the longer lawyers take the more they are rewarded
- can give rise to unethical practices such as “fee padding”
- discourages lawyers from finding more innovative ways of operating and from ‘risk sharing’: with clients

On the other hand, it is said that even when offered alternatives, many clients (even corporate lawyers when they are the clients of private practices) still prefer the availability of detailed itemised bills which show everything that has been done on a file.

This is a ‘live’ issue, which will generate ongoing debate in the profession.

### **Disbursement recovery**

Substantial disbursements should not be paid out of the office account, and the level of disbursements being carried for clients by the firm should be under constant review.

Many firms do not carry their clients for disbursements and require monies on account of costs and disbursements or require clients to pay the disbursements as they go. This alleviates the problem of the firm paying interest on the monies, which are in effect loans to clients paid by the firm and minimises the possibility of a disbursement not being captured until too late. It can, however, be cumbersome and each firm will have its own policy.

Disbursements must be fully recovered by being posted to clients' ledgers as soon as they are incurred. Sundry disbursements such as STD, ISD, fax, photocopying etc. should be posted daily.

*What is the policy in your workplace in relation to disbursement recovery?*

### **Client billing**

Billing clients is a fairly simple process if all matter ledgers are up to date with time recording details showing what was done. In such circumstances it is usual for accounts staff to prepare the draft bill for time spent at the lawyer's hourly rate plus any disbursements. Partners then check the bill to ensure that it is in accordance with the agreement with the client.

Sometimes, due to the nature of the work done or urgency requirement, time recorded work is charged at a premium. In other situations it may have to be written off as a discount. According to many commentators, lawyers who frequently discount their work demonstrate a lack of confidence or undue conservatism. Billing is a measure of lawyers' confidence in the quality of the work they undertake and its timelines.

It is most efficient for all concerned, the firm and the clients, to send bills regularly, and most importantly, as soon as a matter is finished. If the payment strategy is fully outlined to the client at the start of the matter then the whole billing procedure is easier for all concerned. This should be reflected in the costs agreement.

The result of the matter may be relevant to the billing. For example there may be a conditional costs agreement where costs will only be charged for a successful result. Under these circumstances a client has usually agreed under the costs agreement to the payment of a premium.

Conversely, a discount may be appropriate in other cases. The records kept for fee earners' results should be adjusted to show any mark-ups or discounts.

As long as the client has had the strategy outlined and there is continuous communication, short form bills are more usual, as long narrative bills are time consuming to prepare and not of particular interest to the client. Again how the client wants to be billed should be discussed at the outset of the matter and dealt with in costs disclosure.

*What is the policy in your workplace in relation to:*

- *Informing clients as to costs?*
- *Costs agreements?*
- *Letters of engagement?*
- *Progressive or interim billings?*
- *Discounting/premium billings?*

*If you are unclear, find out.*

## **Getting paid**

Sending clients all the bills in the world is of no use if they aren't paid. It is usually best to establish with a client at the outset of a matter the terms of payment of costs. Part of a normal costs agreement will deal with this. Staged billings agreements should be followed promptly as agreed. An authority to draw on trust account funds as and when needed is also desirable.

The firm should have a clear recovery policy in the event that the client does not pay as agreed. Depending on the retainer and professional obligations, the firm may inform the client that further work on a current matter will be halted until the costs are paid. In relation to completed work, careful and regular credit control procedures should be implemented.

*What is the procedure in your workplace regarding recovery policy?*

## **Measures of fee earner productivity**

What is being measured is the level of achievement and it is vital for law firms to achieve their budgets if they are to remain in business. Some indications as to whether profitability is maintained and each fee earner's contribution to profitability are as follows:

- the number of billable hours charged on an annual basis
- the number of billed hours and billing consistency on a monthly basis
- the dollar amount of recovered fees
- bad debts, i.e. over 90 days
- the level of work in progress (WIP). This is time spent on matters which have not been billed
- the level of unbilled disbursements
- write offs - discounts etc which reduce the amount of costs billed from the time recorded.

Of the above, a matter of concern for a firm is the level of its work in progress or WIP. Typically, you as a new employee will have more work in progress in the early months than billings. You will be encouraged to bill regularly so the firm can meet its budget. If you have a high WIP level which has not been converted into billings you may be considered to have a consistently high work in progress which indicates inefficiency in billings.

The yardstick for measurement will usually be the budget, if this has been properly calculated reflecting partner expectations. Other benchmarks include FMRC Surveys, consultants, advices and anecdotal evidence as to what other firms consider appropriate in the circumstances.

*Is your profitability monitored? If so, how? Do you think you are profitable for your workplace? If not, do you think you will be profitable in the near future?*

## **Conclusion**

Practice management is a specialised field and many articles appear monthly in the journals of the legal professional associations and elsewhere. Reading further in this topic will assist you to understand how practices work and techniques for increased effectiveness and efficiency, so that clients can have their legal problems solved at a price they can afford and partners can afford to remain in practice with an acceptable livelihood.

The challenge for fee earners, especially employed solicitors, and more so for the newly employed, is to develop working procedures with a view to maximum efficiency.

Recent research into the operation of incorporated legal practices (ILP's) by Professor Christine Parker of Melbourne University on complaints made to the NSW Office of the Legal Services Commissioner has shown that the level of complaints against ILP's were one third of complaints against other "traditional" practices. ILP's are required to have an "appropriate management system" (AMS) to ensure compliance with the legal profession regulations. An AMS must address many of the matters discussed above – including file management, dates and deadlines, client communications, costs disclosure, avoidance of negligence, and appropriate staffing, skills and supervision. Parker's research indicates that the process of self assessment against the framework of an AMS results in practices delivering better client service, resulting in less complaints. The requirement for all practices to have such systems is being considered under the National Legal Profession Reform Project.

## **Self-Assessment Task 2.5 - Financial Management**

*You may wish to analyse a financial system in your workplace or one drawn from previous experience. This may be a broad system impacting on your work, or a particular financial system such as billing, ledgers, cost recovery, work in progress, and procedures for costs disclosure.*

*You should analyse the system, your input, its response to your needs, its impact on your work and working methods, integration with other systems in your workplace, the system's accessibility and its effectiveness and efficiency in delivery of the legal product.*

## Module 3: Commitment to Professional Values

### Aims and Objectives

#### Aim

To understand, develop and maintain:

- appropriate professional behaviour in all dealings with clients, the courts, and the public
- a commitment to the improvement of the profession
- professional knowledge and skills, which, through continuing professional education, guarantee competence in client representation.

#### Objectives

This module is divided into four units. At the end of this module you should be able to demonstrate that you are able to:

- 3.1 Recognise and resolve conflicts of interest and/or duties  
Identify, analyse, apply and, where necessary, resolve conflict between the privileges and obligations incident to the relationship between the legal practitioner and:
  - the client
  - the court
  - the public
  - other lawyers.
- 3.2 Comply with ethical standards, rules of professional conduct and other regulatory standards of the legal profession  
Observe the ethical standards, rules of professional conduct and other regulatory standards of the legal profession.
- 3.3 Commit to professional development  
Demonstrate a commitment to maintain and further develop professional knowledge and skills to guarantee competence in client representation, through continuing professional education.
- 3.4 Maintain awareness of current issues in the profession  
Demonstrate an awareness of the current issues facing the legal profession and a commitment to improving the profession.

#### Relationship with the Coursework Component

In the Coursework Component of the PLT Program, you are introduced to the law and ethical principles which relate to professional conduct and practice and the special privileges and obligations of a legal practitioner.

If you have not completed the Coursework Component, you may wish to read the following Practice Papers:

##### NSW

PR201 - Professional Conduct and Discipline

PR202 - The Practitioner's Relationship with the Client

PR203 - The Practitioner's Relationship with the Court

PR204 - The Practitioner's Relationship with the Public and the Profession

##### QLD

PR401 – Professional Conduct and Discipline

PR402 - The Practitioner's Relationship with the Client

PR403 - The Practitioner's Relationship with the Court

PR404 - The Practitioner's Relationship with the Public and the Profession

**VIC**

PR301 - Professional Conduct and Discipline

PR302 - The Practitioner's Relationship with the Client

PR303 - The Practitioner's Relationship with the Court

PR304 - The Practitioner's Relationship with the Public and the Profession

**WA**

PR601 - Professional Conduct and Discipline

PR602 - The Practitioner's Relationship with the Client

PR603 - The Practitioner's Relationship with the Court

PR604 - The Practitioner's Relationship with the Public and the Profession

If you have completed the Coursework Component, you may wish to review these papers.

## Introduction

This module extends the ethical concepts which are encountered in the Coursework Component of the PLT Program and looks at the application of ethical standards in practice, your role in the maintenance of those standards and the reputation of the profession.

Recently there have been many changes affecting the legal profession - changes brought about through legislation, regulation, consumerism, competition and deregulation. As a member of the profession you have a role in meeting the continuing changes facing the profession.

Before reflecting on the tasks set, you should read through the notes, consider the trigger questions and relate them to your understanding of the issues in the workplace.

### 3.1 Recognising and Resolving Conflicts of Interest and/or Duties

The privileges and obligations of a legal practitioner are discussed in the Practice Papers referred to in Module 1 - Aims and Objectives.

They may be summarised as follows:

To the client:

- advancement and protection of the client's interests
- competence and diligence
- confidentiality and client privilege
- reliability and integrity in handling clients' moneys.

To the court:

- openness and frankness
- responsible use of privilege
- ensuring the integrity of evidence
- avoidance of misleading conduct.

To the public:

- honesty and fairness
- maintenance of the law
- responsiveness to disciplinary systems and from regulatory bodies
- upholding and advancing the image of the profession.

To other lawyers:

- honesty and frankness
- courtesy
- adherence to undertakings.

Conflicts may arise between the various privileges and obligations.

### Reflective Task 3.1 - Recognising and resolving conflicts of interest and/or duties

*At this stage of your professional development, can you demonstrate your ability to identify, analyse, apply and, where necessary, resolve conflict between the various obligations of a legal practitioner?*

*Consider a situation in which there has been a potential or actual conflict between duties. How was conflict avoided or resolved? If possible, draw from your practical experience; if it is not, draw on your past experience, or any recent example e.g. reported in the disciplinary reports or media.*

## 3.2 Compliance with the Ethical Standards, Rules of Professional Conduct and other Regulatory Standards of the Legal Profession

The ethical standards, rules of professional conduct and other regulatory standards of the legal profession are covered in the Coursework Component, and are described in the Practice Papers referred to in Module 3 - Aims and Objectives.

### Reflective Task 3.2 - Compliance with the ethical standards, rules of professional conduct and other regulatory standards of the legal profession.

*Consider a work situation which demonstrates your ability to observe the ethical standards, rules of professional conduct and other regulatory standards of the legal profession. This situation should be related to your work experience or to your past experience but you might need to use a recent example from e.g. those reported in the disciplinary reports or the media.*

## 3.3 Commitment to Professional Development

If you want a successful legal career, planning is important.

You also have an obligation to enhance your knowledge and skills continually so that you are able to attain and maintain a competent service to clients in your field of practice.

This involves not only taking advantage of courses of study to increase your knowledge in your field of practice, other fields of legal practice and other relevant disciplines, but also involves:

- consistently reading about new developments in the law and other relevant fields of disciplines
- reflecting upon and learning from experience, which entails:
  - critically assessing your own performance
  - identifying ways in which your performance can be made more effective.

These materials have been designed to encourage you to use those processes of reflection and learning from experience.

### Planning for your future

You may already have a clear set of goals for your professional career or you may be considering whether you wish to practise as a solicitor in the private legal profession, go to the bar, work for Government or in industry or some other legal environment. You may have a particular area of law in which you are already expert or in which you wish to specialise. However, you may also be uncertain as to the direction you wish to take, and may even be reviewing whether you wish to be a legal practitioner.

You are reaching the end of a long period of study where your goal may have been solely to obtain admission as a legal practitioner. Now, the end is in sight, but you may not have given much thought to your career path after that.

However certain you may be at this stage of your personal goals in your career, circumstances change. For various reasons, your preferred career path may no longer be available to you, may not be as attractive to you as it once appeared, or may not be a profitable area of practice.

### Preparing a career plan

Just as businesses need business plans to identify the goals of the business and how they are to be achieved, it is as important for you to have your own personal action plan.

Where are you now? Where do you want to be in six months, one year, two years, or five years? What do you have to do to get there?

Planning should not be a time consuming or unduly difficult process. When you are under pressure of work, it is difficult enough to plan ahead to the next week or month, let alone think about your future in the longer term.

However, personal career planning has great benefits and will help you to identify those aspects of your work and skills which you need to develop, and those which you already have or which are less important.

*Prepare a personal career plan.*

## **Specialisation**

One option you may wish to consider is whether to become a specialist in a particular area of law. Specialisation of legal services has been a trend in the profession for a number of years and has more recently been formalised into a system of accreditation for specialists.

There are two types of accreditation schemes.

1. The first is what is termed a low level scheme. This permits a practitioner to advertise that he or she is in a specialist field of work or is prepared to accept instructions in that particular field of work.
2. The other schemes are medium and high level schemes of specialist accreditation. Such schemes have formal requirements which must be satisfied before the practitioner is permitted to publicise the fact that he or she is an accredited specialist.

The requirements may include a minimum period of practice experience (e.g. three to five years), actual practice involvement in the specialist area and satisfactory completion of the prescribed assessment regime.

## **Practising throughout Australia**

It may be part of your plan to practise in another state or territory, or overseas.

Major changes are now occurring for the delivery of legal services at a national level.

The new national model laws governing the legal profession will, when enacted at a state and territory level, facilitate lawyers practising law throughout Australia. These laws are discussed in paragraph 3.4.

## **Continuing Legal Education**

In your career, one of the factors which you need to plan for is the need to keep abreast of developments in the law, the profession and particularly in your area of expertise. As well as the obligations on you as a practising lawyer to be able to advise your clients about the current law and procedures, there are mandatory continuing legal education requirements for you to fulfil each year.

Many large legal practices run in-house training programs through which you will be able to satisfy the mandatory requirements. Other employers may pay for you to attend external continuing legal education programs.

You may decide to undertake a higher degree, which itself will satisfy the requirement.

Some of you may not have access to in-house or other continuing legal education programs and you may have to plan to undertake these and to bear the cost yourself.

The College and the legal professional associations are among the many providers of continuing legal education programs.

When you are admitted you will receive a large amount of advertising material about continuing legal education from various providers. It is important to select programs which are suited to your particular career plans and needs.

### **Towards Best Practice**

Continuing education and training is intended to continually improve standards in the production and delivery of legal services.

Many firms and other organisations have introduced quality assurance programs to improve their efficiency and effectiveness. There are also a number of forms of certification by external bodies which law firms and other organisations have achieved e.g. under ISO 9000 or the QL Code (or its replacement Law 9000).

Best Practice requires a systematic approach to practice management to lead towards:

- increased client satisfaction
- enhanced professionalism
- minimisation of risk and practice improvement, and
- enhanced profitability.

By continually revising and improving your knowledge and skills and adopting the work habits and procedures encouraged in the PLT Program, you will not only enhance your own career development but you will also contribute towards the success of your firm or employer and the standards of the profession as a whole. The value of Best Practice programs has been recognised by professional indemnity insurers, some of whom offer premium discounts for firms who implement such a scheme.

### **Self-Assessment Task 3.3 - Professional Development**

*You may wish to prepare a personal and professional development career plan. Do you plan to specialise in a particular area? Is there a specialist accreditation scheme which applies to your area and what are the requirements?*

*How are you keeping up to date with recent development in law and practice? What other action have you taken or do you plan to take to acquire or increase your expertise in your chosen area? What in-house training sessions, etc. have you attended? What did you learn at such a seminar and how have you applied it in your daily practice?*

### **3.4 Awareness of Current Issues in the Profession**

The legal profession, like other professions, is constantly changing and facing new challenges. Admission to the legal profession no longer guarantees a lifetime income and security, nor is it a guaranteed passport to enjoying a privileged status in the community.

All professions are now expected to offer services at competitive prices and meet consumers' expectations. There is a continuing call for greater accountability. For many professionals, it is difficult to reconcile the economic realities in a competitive world with the ethical framework of the profession. However, if the legal profession fails to deliver to the consumer what is wanted and at a price it is prepared to pay, there are others in the business and government community who can fill the vacuum.

We have selected two issues that may be of interest to you. These are:

1. National Practice; and
2. Work-life balance – stress and depression.

## 1. National Practice

Corporate and government lawyers regularly offer legal services across state, territory and national boundaries. Technological and other advances now permit even the smallest of law practices to do the same. In these circumstances, universal and uniformly applied rules of market conduct should, as far as possible, apply to the lawyers delivering the services.

In May 2004 the Commonwealth Attorney-General released the National Legal Profession Model Bill prepared by the Standing Committee of Attorneys-General. The Model Bill represents a commitment by all states and territories to reform of the laws, regulations and practices regulating the legal profession, creating a nationally comprehensive and consistent regulatory regime leading to more effective competition among lawyers, for the benefit of consumers.

The main areas of regulation covered by the Model Bill are:

- o reservation of legal work and legal titles;
- o admission to practice;
- o practising certificate requirements;
- o trust accounts;
- o fidelity fund cover;
- o costs and costs disclosure;
- o complaints and discipline;
- o external intervention;
- o lawyers' business structures;
- o legal profession rules; and
- o foreign lawyers practising foreign law in Australia.

All Australian jurisdictions, with the exception of South Australia, have adopted the Model Bill. However, despite a degree of uniformity having been achieved, the legal profession continues to be regulated at the state and territory level. As a result, particularly in areas of regulation not covered by the Model Bill, there remain significant differences in the manner of regulation of the profession from jurisdiction to jurisdiction. There are, for example, up to 55 different regulators of the profession in Australia.

During 2009, the Council of Australian Governments (COAG) agreed on a plan to achieve national regulation of the legal profession. If achieved, this plan would probably constitute the most significant development in the history of the legal profession in Australia.

On 19 April 2010, the draft uniform legal profession legislation (called the Legal Profession National Law) developed by the Taskforce was presented to COAG and released for public consultation, closing on 13 August 2010. The Legal Profession National Law has a large number of reforms, including:

- o establishing a National Legal Services Board and Ombudsman to act as the central, uniform standard setter and deal with compliance and complaints handling issues;
- o creating national practising certificates and a national register of lawyers' admissions to allow lawyers to practise nationally without any additional requirements;
- o requiring lawyers to disclose sufficient information to their clients to allow them to make informed decisions about services that are provided and the likely costs involved; and
- o introducing a new option of 'conditional admission' to allow foreign lawyers to practise more easily in all Australian jurisdictions.

*How will the proposed Legal Profession National Law affect you now and in the future? Is it likely that you will be providing legal services in more than one Australian jurisdiction? Will different rules of conduct apply depending on which jurisdiction you live, where you practise, the nature of your practice or the business structure you adopt?*

## 2. Work-Life Balance – Depression

In Module 2 you read about work management skills which will assist you to manage your work load and avoid procrastination and client complaint. In addition to those skills, it is important to recognise that there may be external factors which contribute to problems of managing work load (including depression) and that you must develop skills which assist you to create a work-life balance satisfactory to you. For many lawyers, achieving a work-life balance is a struggle.

Anecdotal evidence has long suggested that professionals suffer from higher rates of stress and depression than other members of the general Australian population. To compound this, it has been suggested that lawyers suffer more stress and depression than other professions.

A 2006 survey by Beaton Consulting in conjunction with the organisation beyondblue confirmed that Australian lawyers experience the highest rate of depression out of all the professions in Australia. The survey of over 7,500 professionals found that lawyers are more than 50% likely to suffer depression than other professionals. Many assume that depression will be suffered by those lawyers working in large firms dealing with high-end transactions and high pressure cases. However, of real note, the survey found that junior lawyers are those most likely to be affected.

The survey also found that the legal profession has the highest percentage of people (almost 5%) using alcohol or illicit drugs to dull their problem.

It is also noteworthy that respondents to the survey perceived that there was a lack of understanding in the workplace about the nature of depression and its management.

In 2008 Beaton Consulting published a report on Work-life balance in Australia in the New Millennium: rhetoric v reality. An executive summary of the report may be found at [www.beaton.com.au](http://www.beaton.com.au).

The transition from university life to legal practice has many aspects which may lead to susceptibility to depression. Junior practitioners may be exposed to vastly increased workload pressures and responsibility, long hours and unreasonable self-expectations.

The effects of depression are not only personal to the sufferer. They may have ramifications for the profession as a whole as untreated depression has an economic cost due to absenteeism and lost productivity.

There is increasing recognition that effectively dealing with depression in lawyers will foster a sense of community and collegiality in the profession. State Law Societies have adopted various measures to help combat the issue of depression and in an effort to maintain high ethical standards and to assist lawyers and their needs. Each state society has some form of care program available to members designed to help lawyers with the best possible medical and professional help.

Other initiatives include mentoring program where a newly admitted lawyer will be matched with a senior practitioner who is capable of providing advice beyond merely law and procedure

The College of Law now also offers the Resilience@Law workshop during the Coursework of its PLT program, which deals with remaining resilient in practice and the skills needed to achieve this.

It is vital that you are aware that you are part of a profession which experiences higher than average rates of depression. You should also be consciously aware of recognising symptoms in yourself taking steps to access appropriate healthcare. You should also consider increasing your willingness to assist and support colleagues to access appropriate healthcare.

Some suggestions of specific things that you can do to alleviate stress and maintain a healthy work-life balance may include:

- working more productively rather than longer
- taking regular holidays

- developing a frame of mind that allows you to leave work 'at work'
- investigating opportunities for more flexible working conditions:
  - flexible hours of work
  - working from home
  - part time work
- making time to maintain relationships outside work with friends and family
- making time to pursue interests and activities outside work
- ensuring you take regular exercise and maintain a healthy diet.

### **Self-Assessment Task 3.4 - Awareness of Current Issues in the Profession**

*Choose a current issue affecting the profession which interests you or which affects your area of practice. What is the issue and how does it affect you, your area of practice and/or the image of the profession. Consider any possible future developments and your role in those developments.*