



Standard Book  
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Handbook

**Legal risk management**

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# Preface

This Handbook was prepared by a Working Group under the Joint Standards Australia/Standards New Zealand Technical Committee OB-007, Risk Management, and forms part of the series of publications based on AS/NZS 4360:2004, *Risk management* (hereafter called 'the Standard' or 'the Risk Management Standard').

It is prepared to provide guidance to lawyers on how to align their provision of legal services to best meet their client's needs by utilising the Risk Management Standard. It can also be used by their clients to determine the nature of the legal risk management services they would like to receive.

All lawyers can benefit, whether in sole practice, as a member of a firm of any size or as in-house counsel, working for government or a corporation.

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Australian Corporate Lawyers Association

Corporate Lawyers Association of New Zealand

Law Society of New South Wales

LawCoop Pty Limited

The College of Law

# Executive summary

The aim of this Handbook is to demonstrate the benefits to lawyers and their clients of applying the risk management process as set out in the Standard to the practice of law. For lawyers it will assist a necessary, emerging and ultimately inevitable transition of legal services from a largely reactive, dispute resolution focus to a client aligned, preventative law approach. For a profession whose prime goal must be effective delivery of legal services, the Handbook offers more positive relationships based on long-term business partnerships. For clients, the Handbook may provide a further impetus for lawyers to deliver more proactive legal services responsive to the needs of their organisation.

For some lawyers a major shift in thinking is required to embrace practice based on assisting clients manage their legal risks (which importantly includes opportunities) holistically, rather than by categorisation based on discrete technical legal expertise. Clients need to accept that buying patterns for lawyers will change; this is consistent with treating lawyers as regular business facilitators rather than occasional legal crisis fire-fighters. To utilise lawyers early is already the preferred mode of retention for legally astute organisations.

Rather than being a scientific methodology inappropriate for a profession, risk management actually assists the discharge of the onerous duties owed by lawyers to their clients.

The Handbook provides a practical guide for lawyers on how to utilise the Standard in managing legal risks for their clients. A comprehensive case study demonstrates in very practical terms how Preventative Law can be applied to normal issues faced by an organisation.

The benefits to both lawyer and client are compelling and tangible.

# Contents

|          | <i>Page</i>   |
|----------|---|
| 1        | Introduction  |
| 1.1      | Why practice preventative law? ..... 5  |
| 1.2      | How can the legal profession use risk management in the delivery of services? ..... 7 |
| 1.3      | What This Handbook aims to do ..... 8   |
| 1.4      | What this Handbook does not do ..... 9  |
| 1.5      | Who should read it? ..... 9   |
| 2        | Why adopt a process for the management of legal risks?                                |
| 2.1      | The attributes of good legal risk management ..... 10                                 |
| 2.2      | The benefits of adopting a systematic approach ..... 11                               |
| 2.3      | Applications of legal risk management ..... 13  |
| 3        | The nature of legal risks and legal risk treatment options                            |
| 3.1      | Case study example ..... 14   |
| 3.2      | Key facts and circumstances ..... 14  |
| 3.3      | Scenario 1 ..... 15   |
| 3.4      | Scenario 2 ..... 16   |
| 3.5      | Analysis ..... 17   |
| 4        | The legal risk management process ..... 18  |
| 5        | Planning for legal risk management  |
| 5.1      | Background ..... 31   |
| 5.2      | Process to develop a legal risk management plan ..... 31                              |
| 5.3      | Sustaining legal risk management ..... 35   |
| 6        | Satisfying organisations' legal risk management needs ..... 36                        |
| <br>     |   |
| APPENDIX |   |
| A        | Contract HAZOP – an example of a systematic use of a risk management process ..... 37 |

# 1 Introduction

## 1.1 Why practice preventative law?

Most lawyers wish that their clients came to them for advice before legal problems emerge. Too often clients consult lawyers after being sued, when wanting to sue someone, or when confronted with prosecution. When retained earlier by clients, lawyers are better placed to prevent legal problems from arising.

Recent spectacular corporate collapses here, in the USA, and in Europe have increased the emphasis placed by Boards on legislative compliance as a critical aspect of Corporate Governance. Society and markets now have much higher expectations of companies and remain sceptical until provided with tangible evidence that an organisation is actively pursuing legal compliance. Preventative Law and the systematic application of risk management to the practice of law provide the credible assurance which enhances stakeholder confidence and value.

Most organisations do not actively seek to become involved in disputes and even less so in litigation. They recognise that even if they 'win the case' invariably this is at considerable cost and inconvenience. Major litigation ties up senior management, taking them away from running their businesses, which in their absence invariably suffer. Disputes in any form have significant personal impact on senior managers, irrespective of outcome. Even if the organisation wins, it can cost it a great deal (in financial and non-financial terms). It may even adversely affect long-term viability. For this reason organisations want to move away from reactive dispute management, to long-term legal risk prevention and effective legal risk management.

It is irrefutable that lawyers need to align their services to their customers' needs. Not practising Preventative Law and failing to provide this overlay to all services may jeopardise lawyers' long-term survival. Preventative Law fosters a more positive relationship between client and lawyer. However, lawyers need to consider the implications of adopting Preventative Law as their standard method of delivering legal services because it requires the same foresight and preventative behaviour that they desire from their clients. A changed mindset is essential; shifting from reactive crisis management to proactive prevention both for the lawyer and client.