

Risk management

Presenter

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Four key points

- Continue to learn about risk management.
- Develop and use checklists.
LPLC has 31 checklists available for use. You can find the LPLC checklists at <https://lplc.com.au/category/checklists/>
- Use available resources.
- Actively improve your supervision / delegation skills.

Risk management defined

Risk management is the identification, assessment and prioritisation of risks followed by coordinated and economical application of resources to minimise, monitor and control the probability and/or impact of unfortunate events.

- See international standard ISO/DIS 31000 2009.

Why we need risk management

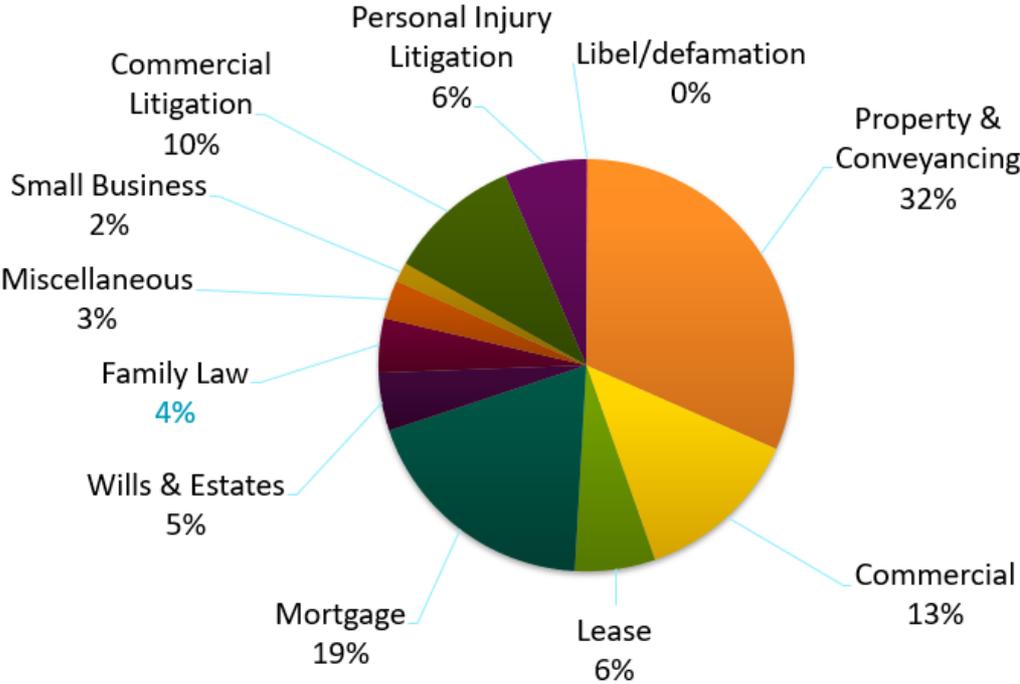
- Prevent claims.
- Public confidence.
- Professional credibility.
- Personal reputation.
- Productivity.

Common underlying causes of claims

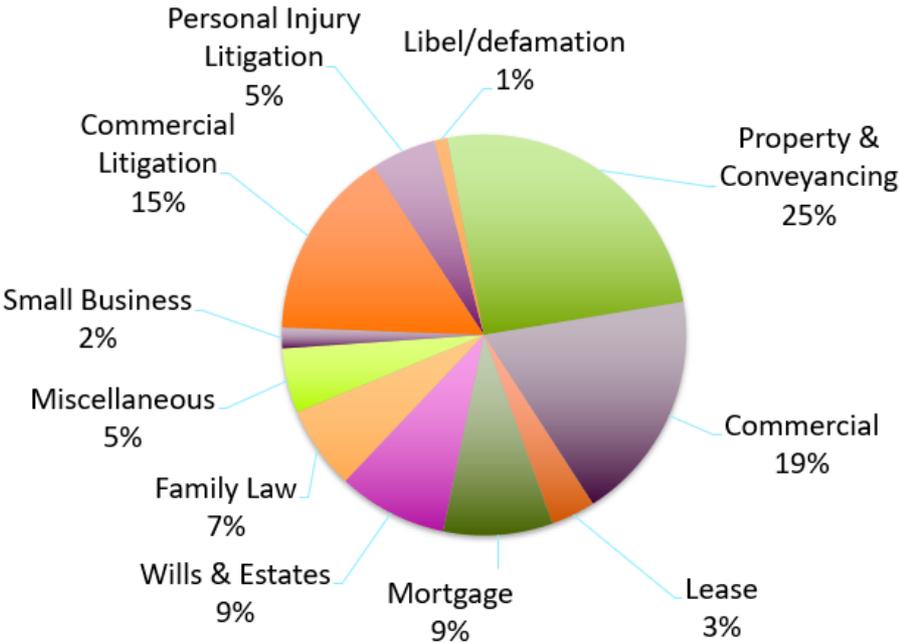
- Attitudes to engagement management.
- Failure to manage legal issues, ask and explain.
- Communication failures – such as not listening.
- Simple oversights.
- Lack of a '[useable trail](#)', see www.livescribe.com.

Claims data

Cost of claims by area - 2017/18



Number of claims by area - 2017/18



Attitudes of practitioners who don't get sued

- It could happen to me.
- Risk management is real work.
- Zero risk is not the goal.
- Self-protection and client service not mutually exclusive.
- Systems are liberating.
- Safe practice is learned not inherited.

What is LPLC?

LPLC is the compulsory professional indemnity insurer to Victorian legal practices and barristers as well as the insurer of choice for many national firms. In addition to handling claims against legal practitioners, LPLC provides a comprehensive program of risk management services to legal practices insured with us.

What is the difference between LPLC, VLSBC, LIV and LSC?

While LPLC, the Victorian Legal Services Board and Commissioner and the Law Institute of Victoria all provide services to the legal profession, they all perform very different functions within the Victorian legal landscape.

[Victorian Legal Services Board and Commissioner](#) is an independent statutory authority responsible for regulation of the legal profession in Victoria. They issue practicing certificates and handle professional conduct complaints.

W: <http://lsbc.vic.gov.au/>

[Law Institute of Victoria](#) is the membership body for the Victorian legal profession. It advocates on behalf of the profession and wider community leading debate on law reform and policy, lobbying and engaging with government.

W: <https://www.liv.asn.au>

[Legal Services Council](#) makes and monitors the Uniform rules governing the legal profession.

W: <http://www.legalservicescouncil.org.au/>

Training

LPLC experts provide presentations to firms insured with LPLC, graduates and local law associations and groups.

Other training provided by LPLC includes:

- **Risk Management Intensive** – all day Melbourne based seminar in July and/or August on the dilemmas, pitfalls and hazards practitioners encounter and how to avoid them.
- **Metro Series** – half day risk management seminars held in the suburbs.

- **Regional Risk Management Tour** – half day risk management seminar run across May and/or June in various regional centres.

W: <https://lplc.arlo.co/w/upcoming/>

LPLC resources

LPLC has extensive publications and resources to help you with your risk management including:

- Risk management blog <https://lplc.com.au/category/blog/>
- Practice risk guide <https://lplc.com.au/category/practice-risk-guides/http://lplc.com.au/category/practice-risk-guides/>
- Checklists to highlight key risk areas in specific practice areas <https://lplc.com.au/category/checklists/>
- A monthly column in the Law Institute Journal <https://lplc.com.au/category/checklists/>
- Ad hoc bulletins to alert you to significant risk issues, usually relating to changes in legislation <https://lplc.com.au/category/bulletins/>
- Risk management training videos with accompanying workbooks on topics such as retainer management, supervision and communicating effectively available in a restricted section of the website.

LPLC also has three hotline services to answer specific practice area questions:

- GST Hotline <https://lplc.com.au/risk-management/taxgst/gst-hotline-service/>
- PPS Hotline <https://lplc.com.au/risk-management/personal-property-securities/pps-hotline-service/>
- Water Hotline <https://lplc.com.au/risk-management/propertymortgages/water-hotline-service/>

Our risk managers are also happy to take your calls if you have a concern about a particular client matter, or 03 9672 3800.

Other useful resources

- LIV ethics hub
 - (a) List of rulings which can be found at: <https://www.liv.asn.au/LIV-Home/For-Lawyers/Ethics/Ethics-Committee-Rulings>
 - (b) Guidelines which can be found at: <https://www.liv.asn.au/Professional-Practice/Ethics/Ethics-Guidelines>
- Legal Services Council information about the uniform conduct rules



Delegation/supervision instruction sheet

Delegator: _____

[insert name]

Who: _____

[insert name of staff receiving work]

When work is due: / /20

Scheduled dates to meet and review: / /20

/ /20

What needs to be done:

Format: [letter format, oral report, written report, email, in conference etc]

Why: [for example, to help the client understand their options, to ensure full disclosure is provided, to ensure there is no conflict in continuing to act etc]

Delegatee notes from meeting when work received

Questions

Details of feedback received

Good delegators and supervisors will help your firm avoid claims.

Law Institute Journal August 2016

The LPLC regularly receives notification of claims where the main cause is ineffective delegation and/or poor or no supervision. Not only can this result in inefficiencies within the firm, discontent among more junior practitioners and complaints from clients who feel they received less than the service they expected, there can be other serious consequences.

Principals have been found vicariously liable for employee negligence or received disciplinary action for breaching professional obligations such as failing to supervise or maintain appropriate management systems. There can also be subtle or long-term effects of poor supervision or delegation including poor wellbeing or loss of staff, low profitability and reputational damage.

Delegation and supervision go hand in hand and while they take time and can be frustrating, when done well can achieve positive outcomes across the whole firm, including being an aid in training staff as well as being an essential risk management tool.

Delegation

Delegation is a process of giving work to others to do, whether it is a one-off specific task within a matter or running whole files.

Mistakes firms make include:

- failing to delegate, resulting in practitioners being overworked
- delegating work to staff who don't have the necessary skills, training or capacity to work
- delegating to staff without being trained how to delegate and failing to then supervise and support the staff who are doing the work.

When giving work to others there must be a plan and process from the start. The what, why, when and how of the work needs to be communicated no matter the level of experience of the person receiving the work.

When Ben Richards of Aticus, a strategic communications consultancy, spoke about delegation skills at the LPLC 2015 Risk Management Intensive, he asked attendees what they thought were the three worst characteristics of a bad delegator. They were, lack of communication, lack of context and lack of trust.

Each delegation also requires some form of supervision, review and feedback that should be clear, contemporaneous, matter-based and robust.

Supervision

Whether being delegated a task on a file or being given their own files to run, employee practitioners need proactive supervision for their own career development as well as claims prevention.

The Victorian Legal Services Board + Commissioner has published RRP 012 Supervised Legal Practice Policy – V1 to offer practitioners guidance on the experience of potential supervisors. Among other traits, the LSB advises that an appropriate supervisor will:

- be appropriately experienced
- not be subject to supervised legal practice restrictions
- provide regular support and feedback sessions.

When delegating a task to do on a file to an employee practitioner, set a time before the task is due to discuss the progress of the work. This helps ensure they are doing what was asked and are on track to finish by the required date. When the work is done the supervising practitioner should provide constructive feedback on the work.

When an employee practitioner has their own file load the supervising practitioner should have regular meetings with the employee to proactively supervise what is being done. The frequency and length of these meetings may vary depending on the practice area and seniority of the employee but should not be overlooked just because the employee is considered senior or trustworthy. It is not enough to just leave the employee to approach the supervisor when they think they have a problem. An open-door policy is not considered adequate or proactive supervision.

Regular meetings provide benefits for both participants. The supervisor gains insight into how the employee is coping with the workload and complexity of their files as well as how further to develop the staff member. The employee receives feedback on how they are performing and should have a sense of being supported and developed.

For information on how to manage regular supervision meetings and other helpful suggestions see Tips for effective supervision and the Delegation/supervision instruction sheet on the LPLC website.

Tips

- Treat supervision and delegation as the real and important work it is.
- Spend time planning the delegation of work.
- When delegating communicate the what, why, when and how.
- When delegating specific tasks set a time to review the work before it is due.
- Supervision must be proactive and more than just an open door.
- Set regular meetings with employee practitioners to discuss their files.

Audits add value

Law Institute Journal October 2017

File audits are an important tool for all legal practices

File reviews are an effective way of checking your firm's susceptibility to claims as well as being good file management practice. No matter the size of the practice, monitoring files for compliance with the firm's standards and for identifying risk areas that need attention are sound claims prevention strategies. File audits can also reveal potential problems on a particular matter that can be resolved before a claim arises.

Supervising experienced staff

Many firms employ lawyers and clerks who work independently and run their own files. Regular face-to-face meetings with even highly experienced employees are critical for monitoring the progress of matters. Reviewing files is a key supervisory tool for ensuring that files are being properly managed as well as providing insight into how people are coping with their file loads.

File audits are not a sign of mistrust. LPLC's experience shows people can fall into bad habits that can be exacerbated when they are busy, under tight time pressures or dealing with personal issues. At one firm the principal conducted a file review and discovered that an experienced lawyer was falsifying time records, not actioning matters and misleading clients about what was being done. The lawyer was having personal difficulties and not coping with the work, and despite working closely with the lawyer over several years, it was only the file audit that alerted the principal to the problems.

Approaches to file audits

The frequency and number of files audited varies from firm to firm, however they should at least cover the day-to-day management and supervision of the files.

Areas of focus will typically include:

- complying with client selection policy
- conflict checking
- sending engagement letters scoping the work and cost disclosure
- following up and receiving signed cost agreement
- diarising important dates
- keeping adequate file notes
- complying with file closing procedures.

Some firms appoint one person to conduct random file reviews while others use file-auditing as a training and team building opportunity where colleagues review

each other's files. Some practices find it more practical to engage a consultant or someone familiar with the practice such as a retired partner.

Some firms review the files on the substance or quality of legal work as well as compliance with policies and procedures. These usually take longer and are often performed as a peer review as they require a person who has expertise in the relevant area of law. Whichever approach is adopted, it is important the person undertaking the task can make objective assessments and report candidly.

Apart from risk assessment, audits can add value to a firm in other ways such as helping to identify weakness and inefficiencies affecting client service, financial performance and employee engagement.

LPLC risk management audit checklist

LPLC's risk management [audit checklist](#), which is available on its [website](#), contains more than 50 questions to assist practitioners to identify possible problem areas in how the retainer and file is being managed. It guides them through a review of a file and helps them assess their risk of a negligence claim.

The checklist is not intended to be used to examine the technical quality of the legal work undertaken. Questions on retainer management deal with issues such as retainer set-up and variations, cost disclosure, billing, appropriate delegation and supervision as well as termination of the retainer. The section on matter management includes questions on file organisation, file notes and client communication.

Once completed, one copy of the checklist could be placed on the file for the next review and another copy in a separate folder with other completed audit checklists. Any deficiencies found should be addressed with the file operator and where necessary, file management policies improved.

Tips

- Undertake file reviews even where staff are experienced.
- Explain to staff that file reviews are a proactive risk management strategy, not a sign of mistrust.
- Audits need not be undertaken by a lawyer.
- Refer to LPLC's [risk management audit checklist](#) for assistance.
- File reviews are not a substitute for regular face-to-face meetings.

