

An analysis of professional liability risk

June 2016

Introduction

Understanding professional liability risk

Throughout 2015 and 2016, Law Mutual (WA) embarked on two programmes of work to better inform risk management activities for insured practices.

Claims review What types of firms are most susceptible to what types of claims?	Review of 196 claims for the period 2011–2014	Understanding of causes and how claims correlate to practice, size and area of law
Risk polling What types of firms have areas of particular control weakness?	Polling of 2,200 practitioners to identify priority risks and controls	Understanding of priority professional liability risks for legal matters

Comparing claims, risk and control information across different cohorts and parameters allowed areas of relative risk concern and control weakness to be identified (by 'control' we mean a measure taken to reduce risk). This has been used to tailor Law Mutual (WA)'s risk management services, so that insured practitioners receive support relative to their risk profile.

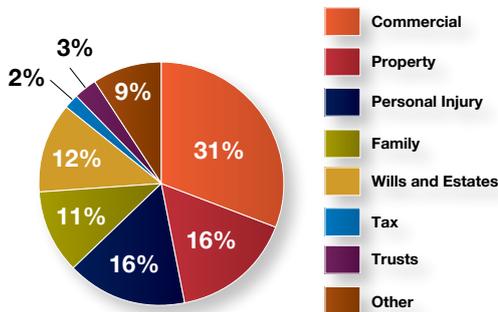
Key insights

Key insights and findings are summarised as follows:

- General consensus on key risks across insured practitioners
- Of 196 claims, four areas of law account for 77% of claims
- Best performing firms with respect to claims have the highest uptake of critical controls
- Large firms have a stronger formal control environment and lower claims record
- Small and mid-sized firms have a disproportionately large number of claims
- More experienced practitioners concerned about matter and client screening, and client relationships, less experienced concerned with service quality and close-out

Claims Review

Top 8 areas of law



- 196 claims
- 293 Allegations

Commercial

- Accounts for one third of all claims;
- Breaches of fiduciary duty, conflicts of interest, defects in trial conduct, failures to consider all legal implications are key sources of claims; and

- Sole practitioners and mid-sized firms overrepresented.

Property

- One sixth of all claims;
- Failures to draft, execute or serve documents, failures to exercise register or renew rights or options, failures to consider all legal implications are the primary causes; and
- Small firms overrepresented.

Personal injuries

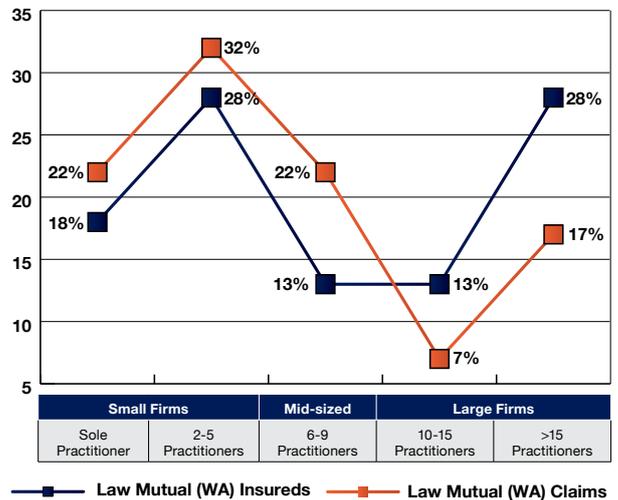
- One sixth of all claims;
- Missed limitation periods, failures to exercise, register or renew rights or options, defects in trial conduct, inadequate investigations of fact are the key concerns; and
- Small and mid-sized firms overrepresented.

Wills and estates

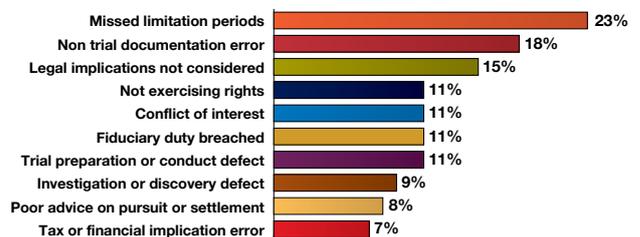
- 12% of all claims;
- Missed limitation periods, failures to exercise, register or renew rights or options, defects in trial conduct, inadequate investigations of fact are the key concerns; and
- Sole practitioners overrepresented.

Claims by firm size

- Small and mid-sized firms account for 59% of total Law Mutual (WA) insureds but 76% of total claims;
- Of these, mid sized firms are most overrepresented in terms of claims;
- Large firms account for 41% of total Law Mutual (WA) insureds but only 24% of total claims; and
- Firms with 10-15 practitioners account for just 7% of all claims.

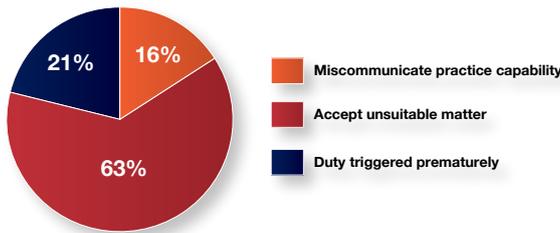


Top 10 allegations against insured firms



Risk Polling Review

Screening prospects and matter



Number one risk

- Accepting an unsuitable prospect or matter, or failing to identify a high risk factor

Implications

- Recognition that identifying and managing high risk prospects and matters is the most effective and efficient way to manage professional liability risk

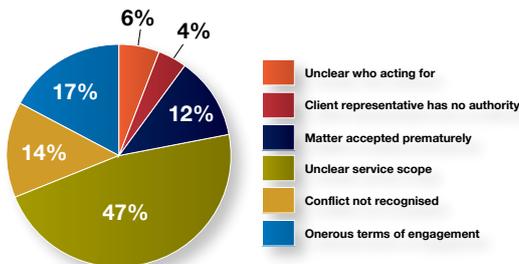
Critical control

- Firm has clear guidelines for screening prospect/matter and identifying high risk factors

Commentary

- Strong correlation between firms with low implementation rates for this control, and overall high claim rates

Engaging client



Number one risk

- Inadequate/ incomplete scope of work creates wider than intended obligations to client

Implications

- Recognition that good scoping upfront greatly reduces all subsequent risks which typically arise due to scope creep outside practitioner area of expertise

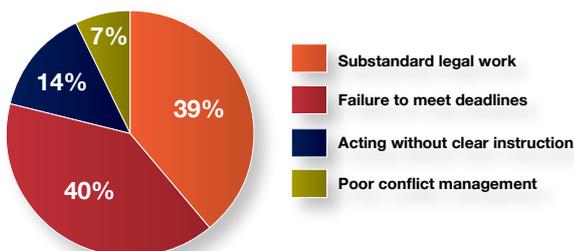
Critical control

- Those responsible for doing so have the processes, time and capability to properly scope and estimate costs

Commentary

- Small firms have lower implementation rates and proportionally higher claims

Providing service



Number one risk

- Failure to meet deadlines/ missed limitation periods

Critical Control

- Diarisation and reminder system is the most widely implemented control across insureds (64%), and dates for high-claim cohorts are no lower

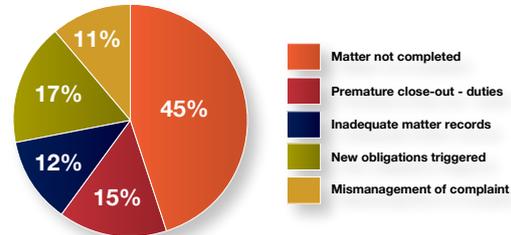
Implications

- Aligns with priority cause of claims but control support needs to be more sophisticated than in the past (see below)

Commentary

- Work to be done around supporting controls and for 36% of firms without diarisation

Close-out and after-care



Number one risk

- Matter not completed, services not fully performed, steps still to be taken results in unrecognised ongoing duty of care

Implications

- Recognition that matter management and risk control tends to drop off once substantial legal services completed

Critical control

- Formal process and checklist for closing out a matter, ensuring completion of promised services and appropriate advice on steps to be taken after the matter concludes

Commentary

- Low uptake of the critical control, particularly among small firms

Control Polling

Overall, controls are weakest for:

Managing client expectations, expectation gaps, and the risk that clients will be dissatisfied with the conduct or outcome of their matter	Managing the close-out of an engagement, and the professional liability risks that arise during close-out and after-care
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Sole practitioners and mid sized firms are the most susceptible to claims and have the most significant areas of comparative control weakness, particularly while in the following phases:

Sole practitioners	Medium firms
<ul style="list-style-type: none"> Screening prospect and matter Close-out and after-care 	<ul style="list-style-type: none"> Screening prospect and matter Providing service

Next Steps

In response to these findings, Law Mutual (WA) plans to provide insureds with new risk management services that:

- Address the specific needs of different insureds, based on firm sizes and specialties, and practitioner experience;
- Focus on the risk concerns, control weaknesses and claims trends outlined in the report; and
- Deliver a uniform and comprehensive approach to risk management through education, control guidance, practical tools and in-house support.

For full details on these initiatives, and the risk and claims findings outlined in this brochure, refer to the detailed report:

Professional Liability Risk Profile Analysis.

Contact Law Mutual (WA) for further information. All enquiries are treated with the utmost confidentiality.

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