

Risk Management: Learning from Lawcover claims

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Professional risks

Outline

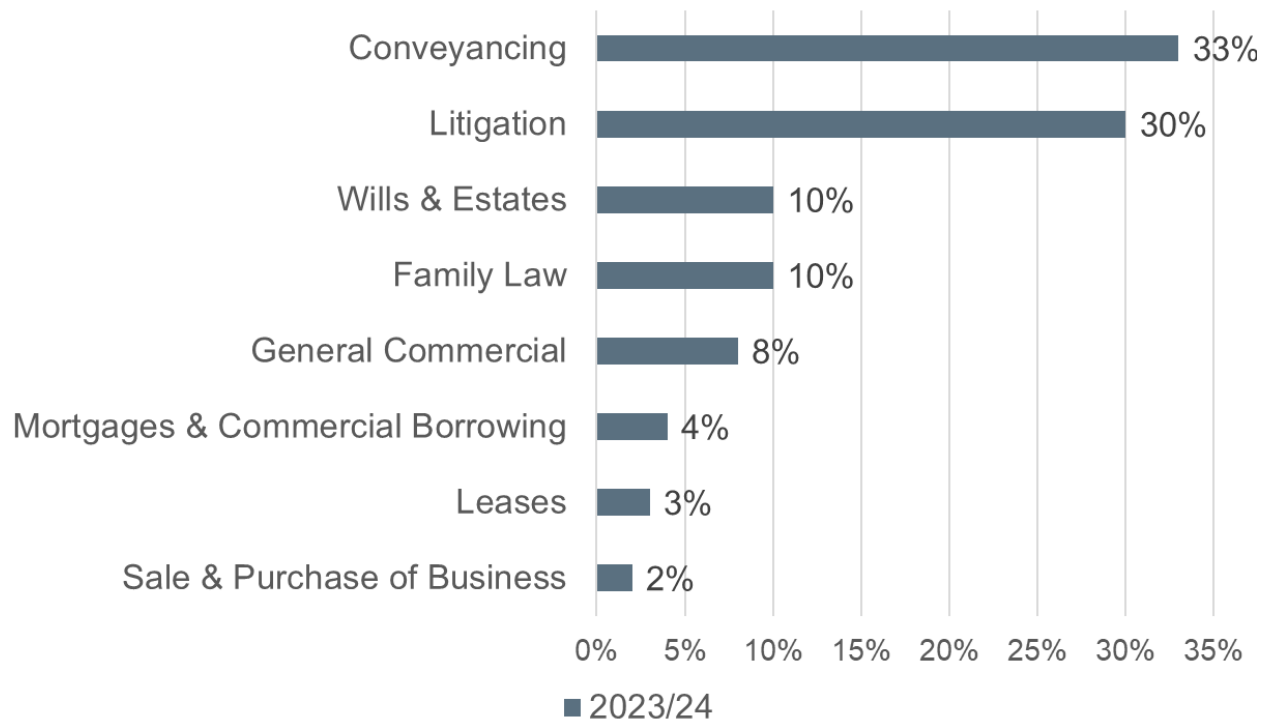
1. Claims statistics
2. Recent cases and practice tips
3. Emerging issues



Claims statistics

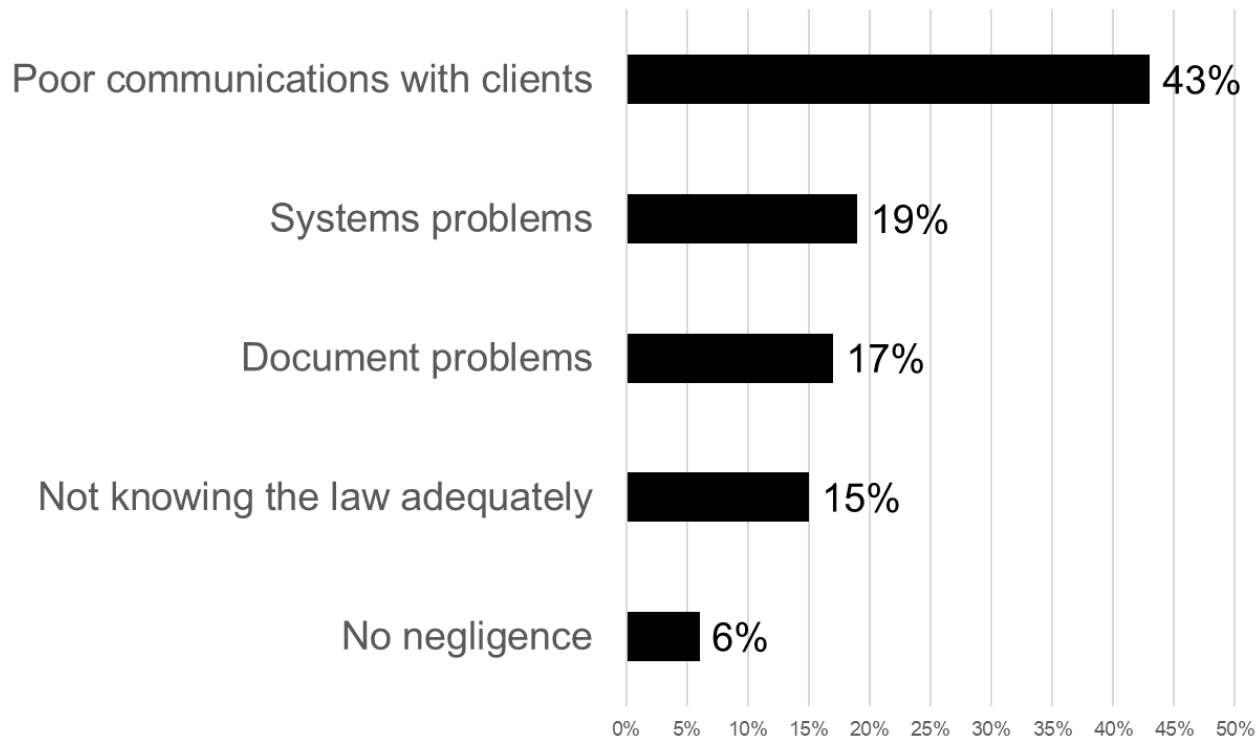
Frequency of notifications

Claims by area of practice



Causes of claims

2023/24





Recent cases and practice tips

Caveats and final searches

***Cui v Salas-Photiadis* [2024] NSWSC 1280**

- Caveat lodged after exchange of contracts.
- Solicitor for purchaser and solicitor for incoming mortgagee did not appreciate significance of title activity check showing lodgment of caveat and proceeded to settlement.
- Incoming mortgagee received a requisition from LRS advising transfer and mortgage could not be registered because of caveat.

Caveats and final searches – practice tips



Don't assume the electronic conveyancing system will prevent settlement if there is a caveat.



Check every title activity check and consider doing a final search to check for caveats or writs before settlement.



If there is a caveat do not proceed to financial settlement without a withdrawal of caveat.

Documenting advice

***Odlum v Friend* [2024] NSWCA 159**

- Advice about settlement and cost consequences
- History of confirming advice re offers, counter offers and costs exposure
- Dispute as to whether advice provided in conference that took place shortly before costs hearing or after the hearing.

Documenting advice – practice tips



Always promptly communicate offers of settlement to your client and confirm in writing any advice given and instructions received in relation to the offer.



When making a file note of a meeting, make a note of the time, date, place and names of all persons present.



Ensure your file notes record advice given as well as instructions received.

Generative AI tools

***Dayal* [2024] FedCFamC2F 166 and *Handa & Mallick* [2024] FedCFamC2F 957**

- Solicitor used an artificial intelligence tool in legal practice management software to prepare a list and summary of legal authorities which were tendered in court.
- The solicitor did not verify the accuracy of the information generated by the research tool before submitting it to the court.
- The legal authorities in the list do not exist.

Generative AI tools

Valu v Minister for Immigration and Multicultural Affairs
[2025] FedCFamC2G 94 and *Valu v Minister for Immigration*
***and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95**

- False case citations and quotes from Tribunal cases included in submissions for applicant. They had been generated by ChatGPT.
- Personal costs order against solicitor.
- Referral to Office of Legal Services Commissioner.

Generative AI tools – practice tips



Understand the benefits and limitations of generative AI tools, including the propensity for ‘hallucinations’.



Never assume that information generated by an AI tool is accurate – always double check.



Read and follow the NSW Supreme Court Practice Note SC Gen 23 – Use of Generative Artificial Intelligence and LSNSW Solicitor’s Guide to Responsible Use of AI

Intra family transactions

***Legal Services Commissioner v Cass* [2023] QCAT 32**

- Solicitor acted for husband and wife in purchase of a property
- Conflict subsequently arose between husband and wife as to whether they should hold title as joint tenants or tenants in common
- Wife wanted to hold property as joint tenants, but husband wanted to hold it as tenants in common

Intra-family transactions

***Legal Services Commissioner v Cass* [2023] QCAT 32**

- Husband agreed to hold as joint tenants as long as wife arranged for granddaughter to move out.
- Husband advised granddaughter has not moved out and gave instructions to register transfer as tenants in common.
- Solicitor recommended that husband advise wife but did not obtain instructions from wife before lodging transfer to clients as tenants in common for registration.

Intra-family transactions

***Legal Services Commissioner v Cass* [2023] QCAT 32**

- Solicitor accepted that:
 - Lodgement of transfer was contrary to wife's instructions
 - Should have realised there was continuing conflict between clients
 - Should have withdrawn from acting for both clients
- Unsatisfactory professional conduct

Intra-family transactions

Claim

- Mother mortgaged her house and gave personal guarantees to secure loan facilities advanced to companies associated with her daughter and son-in-law.
- Solicitor acted on numerous of the loans. No written retainer but it seemed the solicitor was engaged to assist borrowers with meeting lender requirements including that guarantors received required advice.
- Borrowers defaulted. Lenders sought to realise security and mother cross claimed against solicitor alleging solicitor failed to fully explain nature and effect of transactions, transactions were improvident, she was vulnerable client and solicitor ought to have advised her not to proceed.

Intra-family transactions – practice tips



Be clear about who you are acting for and who should obtain separate advice



Ask – can I act for both and also in the best interests of each party? Do all agree to share all information?



Acid test – if I was only acting for this client would my advice be different?

Compounding mistakes

***Legal Services Commissioner v Han* [2023] QCAT 310**

- Former client sued solicitor alleging negligent advice given in 2016
- In 2019 solicitor delivered to plaintiff's solicitor list of documents including two handwritten file notes dated 5 April 2016 and 6 April 2016 outlining relevant advice given
- File notes actually prepared in 2019 after claim served

Compounding mistakes

***Legal Services Commissioner v Han* [2023] QCAT 310**

- Tribunal:

[26] The conduct was not only in breach of rr 3.1 and 22.1 of the *Australian Solicitors Conduct Rules* but contrary to the fundamental duty to be honest and act with integrity at all times. It is fundamental to maintaining public confidence in the legal profession that solicitors maintain their personal integrity and honesty in order to fulfil their duties to the court, their clients and members of the public.

Compounding mistakes

***The Council of the Law Society of New South Wales v FZK* [2023] NSWCATOD 154**

- Solicitor prepared a will for a member of his family and took it to them to consider and execute.
- Family member signed will in the absence of the solicitor or any witnesses.
- Solicitor arranged for two unrelated people to ‘witness’ the will, despite them not having seen it be signed by the testator.

Compounding mistakes

***The Council of the Law Society of New South Wales v FZK* [2023] NSWCATOD 154**

- Tribunal:

[4] The conduct would have been inappropriate irrespective of the nature of the document in question. However, it cannot be overlooked that a will is a document of particular importance and solemnity. That is reflected by the stringent requirements in respect of its execution and attestation: Succession Act 2006 (NSW), s 6.

Compounding mistakes

Legal Services and Complaints Committee and Krishnan **[2023] VR 116**

- A week before a 2 day hearing in WA Magistrates Court, solicitor instructed by defendants to apply for an adjournment
- Solicitor advised clients to obtain medical certificates for a supposed illness to support the application for adjournment

Compounding mistakes

Legal Services and Complaints Committee and Krishnan **[2023] VR 116**

- Solicitor did not:
 - advise on likelihood of success of adjournment application
 - advise of consequences of refusal of adjournment application
 - obtain or prepare adequate evidence to support adjournment application
 - notify the court or the plaintiff's solicitor that he was acting for defendants or that an adjournment was sought.

Compounding mistakes

Legal Services and Complaints Committee and Krishnan **[2023] VR 116**

- Solicitor was appearing at another hearing on the same day and sent a junior solicitor to court to apply for adjournment. He did not tell the clients that he would not be appearing.
- As medical certificate was inadequate, the adjournment application was refused and default judgment entered.

Compounding mistakes

Legal Services and Complaints Committee and Krishnan **[2023] VR 116**

- Solicitor then applied to have the default judgment set aside and at the hearing of that application implied that he had not had any involvement in the adjournment application and did not have any connection with the junior solicitor who appeared at the previous hearing and applied for an adjournment.
- Professional misconduct

Compounding mistakes – practice tips



Don't panic when you discover a mistake – talk to a colleague, talk to your insurer



Always be honest with your clients, with the court and with the solicitors on the other side



Recognise when you should be referring your client to someone else for independent advice



Emerging issues

Emerging issues

Dabbling in interstate conveyancing

Emerging issues

Advising victims of historical sexual abuse

Emerging issues

Bank impersonation fraud



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