By Ronwyn North, Streeton Consulting

This summer is expected to be a severe season for bushfires. People are being urged to take steps now to protect themselves and plan how they will respond if an emergency arises.

Similarly, Christmas and the holiday season can be bad for professional indemnity claims. Whether you are dreading or looking forward to the next few weeks, extra care is needed to reduce the risk of a claim.

What can go wrong?

If your practice is like many others across Australia, the next few weeks leading up to Christmas and the summer holidays will be one of the busiest times of the year.

This “silly season” will be followed by a period of deceptive quiet where firms are either open with skeleton staff or closed altogether.

Indeed for many practices, life will not fully return to “normal” until towards the end of January when school goes back.

There are several factors which make this time of year “claims prone”.

Christmas and vacations generally bring their own pressures for lawyers and clients. Indeed such events are recognised as potentially “life changing” and performance impairing to such an extent that they are included in a diagnostic tool used in various stress and change management programs.¹

In all areas of practice there is pressure from clients and other lawyers alike to resolve matters before the break: People want to move into their new homes, finalise commercial transactions and settle disputes.

Other areas of practice add to the pressure with their own kind of “emergency” work, such as, crisis family law applications, festive season driving and criminal offences, and tax dramas for corporations with December 31st balance dates.

With so many colleagues on leave, lawyers and staff have to “baby sit” matters they know nothing about. Other matters have to be conducted without access to the usual level of specialist expertise.
Clients too may be unavailable to provide necessary instructions when unexpected developments occur.

In this kind of claims prone climate there are increased risks of such things as:
- Simple oversights, even by people who are usually very careful about detail;
- Expired time limits;
- Temptation to deliberately depart from the usual “safe practices” or routines thus setting up problems with existing and new matters;
- Mismanagement of complex legal issues;
- Failure to manage client expectations.

Your “Summer Safety Plan”

To reduce the risk of a claim you might consider the following.

1. What is your existing workload? How many matters do you expect to resolve before Christmas? What steps can you take to increase the likelihood that all goes smoothly with these matters?
2. How will you respond to lawyers and clients who pressure you to take shortcuts? Can you respond in a way that both protects the firm and gives good service?
3. Are you anticipating any last minute or urgent work? How will decisions be made about what work will be accepted, referred on or refused? Do you know what resources will be available to you?
4. Will the necessary engagement procedures be followed for all new work over summer?
5. Are there any matters where time limits might expire in the next few weeks? How reliable is the information on which you will be basing your answer? Do you need to double check?
6. Are there any special or unusual matters that need careful monitoring over this period? Are those matters well documented in case someone has to become familiar with the file in a hurry? Do the “key players” agree to be accessible?
7. Have you reviewed the leave roster to ensure there is appropriate cover? Will staff be adequately supervised? Do you have emergency contact numbers for everyone on leave?
8. Have you advised clients about the holiday arrangements?
9. What else could go wrong and what can be done to make sure it doesn’t?
10. When and how will staff be briefed about the risks outlined above and the Summer Safety Plan?

Hopefully you are reading this when you still have time to put a Summer Safety Plan into effect. If you are reading this on your vacation, no doubt you need the break, which is a risk management strategy in itself. So don’t feel you need to rush straight back to the office. Or do you?

Until next month, safe practice.

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The Holmes-Rahe Survey of Recent Experiences rates recent life changing experiences out of 100 and is a tool for identifying and quantifying the cumulative amount of change (and hence potential stress etc) that a person is experiencing. Following are a few of the more than 50 events in the survey.

<table>
<thead>
<tr>
<th>Recent Life Event</th>
<th>Change Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death of a spouse</td>
<td>100</td>
</tr>
<tr>
<td>Change of financial state</td>
<td>38</td>
</tr>
<tr>
<td>Outstanding personal achievement</td>
<td>28</td>
</tr>
<tr>
<td>Change in work hours or conditions</td>
<td>20</td>
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<tr>
<td>Change in number of family get togethers</td>
<td>15</td>
</tr>
<tr>
<td>Vacation</td>
<td>13</td>
</tr>
<tr>
<td>Christmas</td>
<td>12</td>
</tr>
<tr>
<td>Minor violations of the law</td>
<td>11</td>
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</tbody>
</table>

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