In the 2010-11 financial year, Law Claims notifications seem on par with the previous year (2009-10 produced 118 notifications).

The professional negligence claims notified in the last year have occurred in all fields of legal practice. In some of these areas of law, the number and cost of claims is much higher than in others. We now provide details of the top 3 paid out claims in the last financial year.

1. **Land Transaction / Conveyancing Case**
   **Total Cost $680,000.00**

The vendor client entered into two contracts to sell to the purchaser two blocks of coastal land. At a later date, the vendor purported to terminate the contracts because the purchaser had failed to pay the deposits due under the contracts.

The practitioner advised the vendor that its purported termination of the contracts was ineffective as the purchaser had not been properly served with the Form 1 vendor statements and therefore was not in default in paying the deposits. This advice was incorrect.

New Form 1 Statements were served on the purchaser and an attempt was made to set up a new settlement date under the contracts. Settlement was not effected by the new settlement date and the practitioner served the purchaser with a Notice to Complete which required settlement to be effected by a later date. Settlement was not effected by the later date and subsequently, the practitioner terminated the contracts on behalf of the vendor.

The purchaser successfully brought proceedings in the District Court against the vendor for specific performance of the contracts. The vendor appealed to the Full Court which dismissed the appeal. An application for special leave to appeal to the High Court was refused.

Proceedings were then brought against the practitioner claiming damages on the grounds that the practitioner was negligent and in breach of its retainer in relation to the advice given by it to the vendor in relation to the efficacy of the termination of the contract and, in relation to the preparation of the Notice to Complete and Notice of Termination.

The matter resolved at Mediation with a sum of $680,000.00 paid on behalf of the practitioner.
2. **Lease Case**  
**Total Cost $450,000.00**

The practitioner prepared an underlease between the clients and an aboriginal community organisation in respect of business premises.

The underlease was not consented to by the Minister for Aboriginal Affairs as required by s16 of the Aboriginal Land Trust Act, and the relevant clause of the headlease between the Aboriginal Land Trust and the community organisation.

The community organisation later advised the clients that the headlease had been voided due to its failure to obtain the Minister’s consent to leasing arrangements. The clients were subsequently directed to vacate the premises by the Aboriginal Land Trust.

The clients claimed unspecified damages from the practitioner by reason of the early termination of the underlease. It was alleged that the practitioner was negligent and in breach of the retainer in that there was a failure to make the underlease conditional upon the consent of the Minister; there was a failure to advise the client either directly or through its accountant (who had instructed the practitioner) that the consent of the Minister was required and, that the underlease should be expressed to be conditional upon such consent being obtained; and there was a failure to advise the clients directly or through the accountant of the possible consequences of the clients entering into the underlease without it having been consented to by the Minister.

Overall settlement was negotiated at an informal conference after proceedings had been issued with payment made on behalf of the insured in the sum of $450,000.00.

3. **Sale of Business Case**  
**Total Cost $250,000.00**

The practitioner prepared a Franchise Agreement for his client, to grant a franchise to a company.

It was subsequently asserted that the practitioner was negligent in drafting the Agreement because he ought to have ensured that the sole director of the franchisee company was also bound by a restraint of trade clause in the Franchise Agreement. Only the company was so restrained.

On the day immediately preceding his informing the client that the company did not intend to renew the Franchise Agreement, the sole director incorporated a new company which proceeded to engage in precisely the same business as the franchisee company.

The client asserted that as a consequence, it lost the benefit of some 5 years of franchise fees (assuming that a new Franchise Agreement would have been entered into with the franchisee company or someone else). A claim for loss of income (5 years of franchise fees) was made, together with an alleged capital loss, plus interest and costs.

The matter was listed for trial and following several discussions an overall settlement was achieved with payment of $250,000.00 being made on behalf of the practitioner.

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**For any queries about this or other Risk Management Services offered by Law Claims, please contact the PII Risk Manager, Gianna Di Stefano on 8410 7677.**