Risk Management for 2009

Have you booked your risk management education sessions for 2009? If not, now is the time to start planning.

- All Risk Management sessions can be conducted in-house and are free to all insureds and their staff. All sessions are conducted by experienced presenters and generally run for 1-1/2 hours.
- There is no limit on the number of sessions each firm can request.
- When booking your sessions, consider whether you have had a turnover of staff and thus require repeat sessions on a particular topic. Law Claims will tailor the timing and duration of sessions to suit the needs of all firms.
- We would welcome inquiries from rural practitioners. Given sufficient numbers, Law Claims will be pleased to provide education sessions in rural areas.
- Law Claims is planning an intensive risk management day for 2009 to be held at the Law Society, to provide for those practitioners where delivery of in-house sessions is not possible. Practitioners enjoy and benefit from discussing issues of practice management with other practitioners. We believe it is important that practitioners step out of their firm culture from time to time and get a fresh outlook on what others are doing in the profession to manage the business of Law.

The risk management programs run by Law Claims are effective tools in reducing both the number of claims against legal practitioners and the cost of claims to firms, and as a result, have reduced insurance costs to the profession. We would urge all firms/practitioners to take advantage of this service and to book NOW for 2009.

New Topics for 2009

Technology and e-Risk in Practice
Lawyers have a key role in all aspects of regulation in the Information Age. This presentation will:

- identify key vulnerabilities and risk factors
- provide an overview of current regulatory responses to technological change
- identify challenges and opportunities arising from modern technologies

Data Management and e-Discovery
Data management and e-discovery increasingly involve all lawyers. Recent studies have found that 90% of all documents are digital and 70% are never printed. This presentation will:

- identify critical issues for modern legal practices and their clients in data management
- review recent cases relating to document retention, discovery/ disclosure, protocols and the admissibility of digital documents
- review the new Federal Court Practice Note on e-Discovery

Insurance and Torts – The State of Play
The law of torts and insurance are critical to all areas of legal practice. This presentation will:

- review recent significant cases and developments in the law of torts and insurance law
- highlight some of the judicial and legislative trends in the liability of professionals, including lawyers
- consider the importance of effective risk management strategies for legal practitioners and commercial operations
It is anticipated that “Regulating the Information Age – How will we cope with technological change?” will be a compendium to “Electronic Delivery of Legal Services”. Law Claims will be offering practitioners the opportunity to attend a half day session early in 2009 where both packages will be presented. We urge all practitioners using any form of electronic media in their practice to take advantage of these instructive and useful risk management educational tools.

### Current Topics

**Avoiding Claims from Accidental Clients**

Law Claims has seen an increase in the number of notifications alleging breach of duty to unrepresented third parties. It is often the case that the practitioner is not aware of the expectation of the “unrepresented third party” until a complaint/claim arrives. This session explores a range of aspects of the solicitor/client relationship and how to recognize and deal with unrepresented third parties. The session will include presentation of a number of Law Claims files and provide practitioners with the opportunity to discuss these cases in an effort to reduce risks in their own practice.

**Electronic Delivery of Legal Services**

Do you use email as a regular form of communication, are you considering or do you run a paperless practice, do you have clear and contemporaneous policies in place to deal with all forms of electronic media? This session looks at the advantages, traps and various ways in which technology has become an integral part of legal practice. This session provides practitioners with the opportunity to consider these issues to ensure that delivery of legal services continues to be safe, efficient and confidential.

**Risks for Conveyancing Practices**

Every year since the inception of the insurance scheme in 1982, claims have been notified in relation to defective transfers of real property. This session examines the issues of the risks, the standards of care, whether retainers can be limited, how to manage cost driven clients and other related issues.

**Limited Retainers – Reducing the Risks**

It is becoming increasingly common for clients to carry out part of the work involved in a transaction themselves. All practitioners will be familiar with the client who believes he or she does not need advice, or who wants to carry out part of the task themselves to limit costs or to maintain control of the matter. Other clients “farm” out specific tasks to different experts, so that no one lawyer is handling the entire transaction. This session examines the situation where a practitioner is retained to carry out only part of a task. The session provides guidance on how to manage this situation effectively so that the practitioner’s liability is not extended beyond his or her understanding of the retainer.

**Solicitor – small suburban firm – “The video case study effectively highlighted the cons of limited retainers”**.

**Bridging the Communication Gap**

It has been estimated by some professional liability insurers that up to 50% of complaints and claims against legal practitioners can be attributed in part to poor communication of some kind between the lawyer and client, or within the legal team. This session, through use of a video case study, highlights risky communication patterns and practices, and looks at strategies, that can be implemented to ensure clients are always appropriately informed.

**Managing the Retainer**

Pressures, complaints and claims arise from a failure to manage retainer issues with the client. These pressures are reflected in all areas of practice. This workshop considers where the risks are and highlights the nature of “dangerous liaisons” with clients. It facilitates discussion between participants on these areas. Focus is placed establishing the solicitor client relationship well at the beginning of a matter and then ensuring it does not deteriorate during its progress. The session is supported by a case study that highlights risky practices.
Explaining Your Way Out of a Claim
Many clients say that as a consequence of not being told, or not appreciating the significance of advice they are given, they made ill-informed decisions or gave inappropriate instructions to their lawyers. Within the legal team too, there are patterns of communication breakdown involving explanations including poor task instructions, inadequate reporting back by staff and inadequate time for supervision and explanation. This session examines the mechanisms by which we explain and understand explanations, so that we can identify safe and risky methods of explaining. It also looks at ways we can increase or inhibit the flow of information by asking and listening, so that we can make good communication one of our best risk management tools.

Reducing Risks for Litigation Lawyers
Litigation lawyers are particularly vulnerable to claims. Litigation claims represent 64% of the total number of claims made to Law Claims over the past 5 years and are responsible for 56% of the cost of all claims over that period. This session highlights the major risks of litigation practice and how to avoid them, including correct identification of parties, jurisdictions and causes of action, diligently prosecuting an action, effective settlements and avoiding the “post settlement remorse syndrome”. This session is essential for practitioners involved in litigation.

Managing Critical Dates and Deadlines
Claims that arise from a failure to meet critical dates or respond to client deadlines affect all areas of practice. The number and cost of these claims is significant. Penalty excesses now apply where a payment is made in respect of a failure to meet a critical date in any area of practice. This session discusses where the risks are and identifies areas for improvement of systems and procedures.

Solicitor from medium sized city based firm – “I like the session as it was broken down into helpful stages and had many good suggestions. I intend to implement some of the suggestions into my day to day file management”

Special Counsel for mid size city based firm – “Critical dates are such an important part of our job, it was good to have the reminder and ensure appropriate policies are implemented. I will be implementing a lease renewal folder and putting dates into the electronic calendar and PA calendar”.

Delegation and Supervision
Claims can arise from poor supervision or a lack of understanding between senior practitioners and their juniors as to the parameters of the delegated task and the critical responsibilities to the client. This session explores the working relationship between the supervisor and their junior to develop a good basis for sharing responsibilities.

Conflicts of Interest
Acting for both sides to a transaction or acting for multiple parties is fraught with danger. Taking instructions from a family member, a referring client or a corporate officer or shareholder can also be risky. Who is your client? Have you a system for checking for possible conflicts? Are your own interests involved? How to manage a potential conflict is also discussed.

For any queries about this, or other Risk Management Services offered by Law Claims, please contact Risk Management on 8410 7677.