



# Risk Management

PRESENTED BY MALCOLM HEATH | LAWCOVER

LEGAL PRACTICE MANAGEMENT WORKSHOP 18 - 20 JUNE 2024

# What we'll cover today





# About Lawcover

# History

Lawcover born out of commercial market failures...

**1979**

NSW Govt permitted the Law Society of NSW to establish its own PII scheme to ensure consistent PII cover aligned with practising certificate renewal

**1987**

In the face of rising premiums, a new scheme named **Solicitors Mutual Indemnity Fund t/as Lawcover Pty Ltd** was formed by the Law Society underwritten by multiple insurers

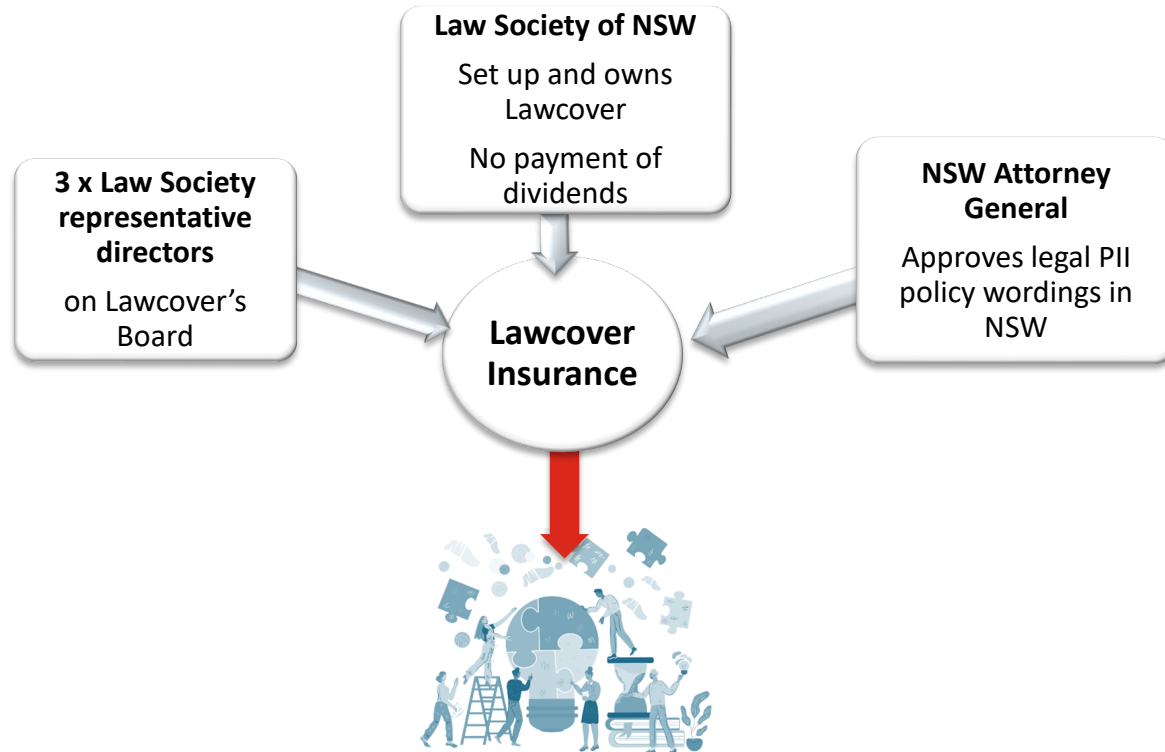
**1998**

HIH took over 100% underwriting of the scheme but collapsed in 2001

**2004**

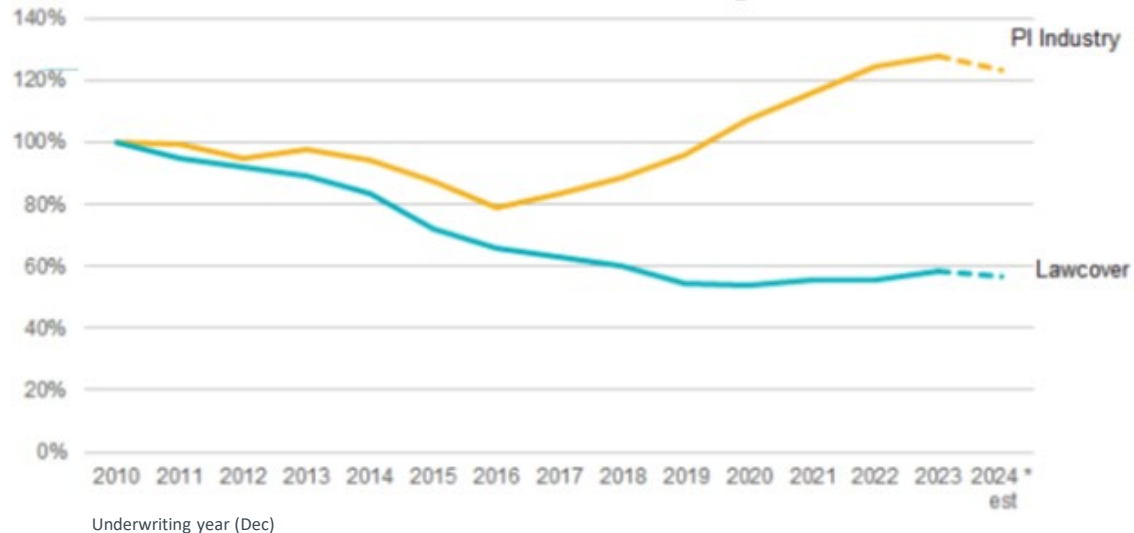
Following 2 years of 'agency cover' **Lawcover Insurance** was formed by the Law Society

# Features



# Affordable premiums

## Lawcover's premiums v National PII premiums



Lawcover premiums have **decreased** by over 40%

National PII premiums have **increased** by around 25% in the same period

Source: Finity Consulting estimates from market data

# Delivery of our purpose – our policies

**2M +**

Primary PII policy

Up to  
**20M**

Optional Top Up

**Free**

Unlimited  
Run Off cover

**Free**

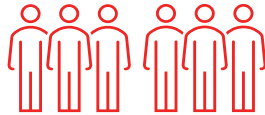
Group cyber risk  
policy

# Who is covered?

In relation to the provision of such services as are provided in the normal course of carrying on the business of a solicitor in a private practice.



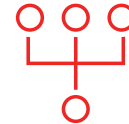
Each of the principals



Each of the employees (solicitors and support staff)



The law practice



Each service company and its employees providing administration and management services to the firm's private legal practice (not including a mortgage practice)



# Are employees always covered?

*Zakka v Elias* [2013] NSWCA 119

The Court found that this was

*“a clear case of a solicitor engaging in a frolic of her own or at her own whim.... It is an act Ms Rahe was not authorised to take as an employed solicitor of the firm. There was not, in my opinion, a sufficient connection between that unauthorised conduct and Ms Rahe's employment to bring this within the scope of the doctrine of vicarious liability...”* at [142].

# What is covered?



Any form of civil liability arising from the provision of legal services

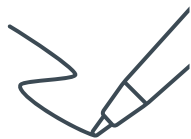


Claims for compensation



Personal costs orders

# What is not covered?



Dishonesty and  
fraud



Fee disputes



Own commercial  
interests outside of  
practice



Disciplinary  
investigations

## Professional negligence claims against solicitors

### Basic principles of negligence

Client must prove:

- Breach of duty of care/breach of retainer (contract)
  - Causation
  - Damage
- Standard of care:
  - Reasonably prudent practitioner
  - Varies according to expertise

### Duties can also be owed to non-clients

Example:

- Beneficiaries under a will
- Beneficiaries under a trust
- Others who rely on advice

Civil claims  
against solicitors

## Possible actions

Torts (negligence)

Breach of contract

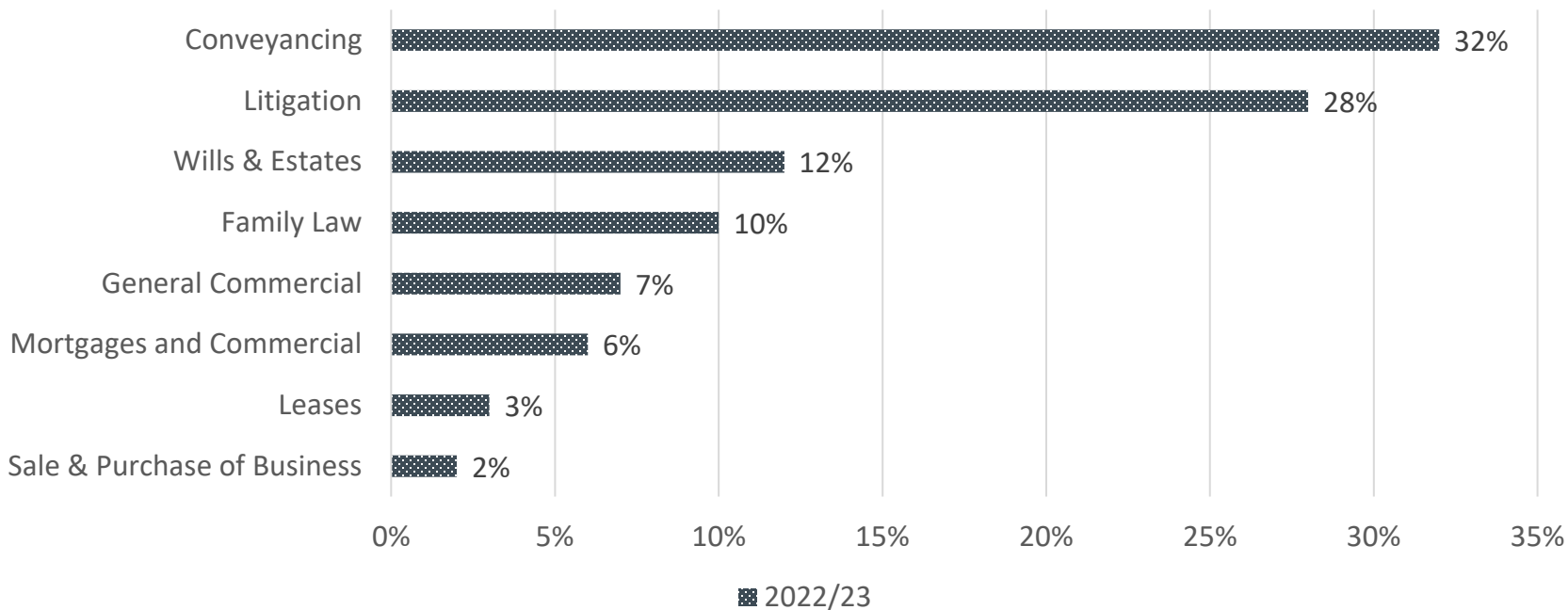
Consumer Law

Disciplinary complaints

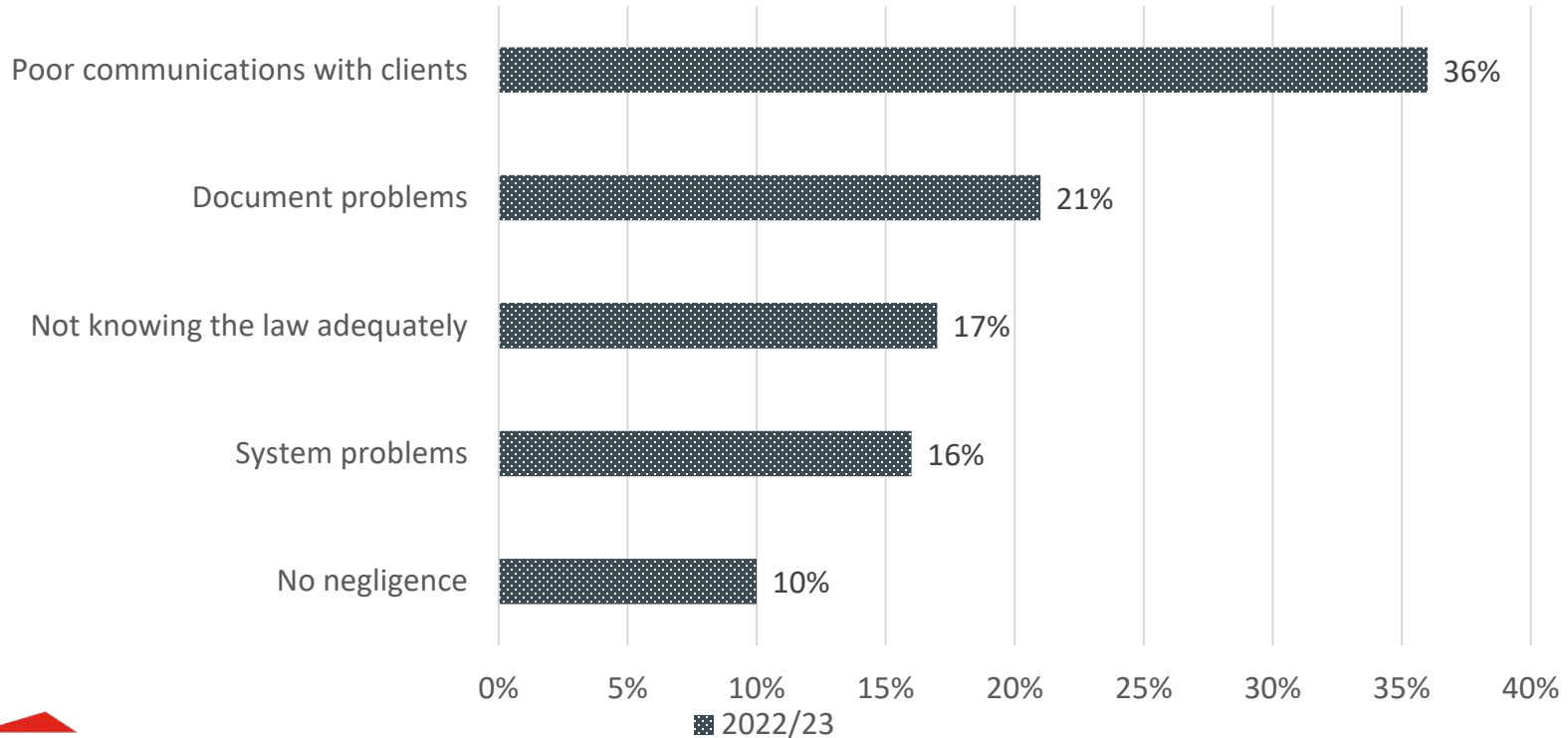


# About claims risks

# Frequency of notifications



# Causes of claims

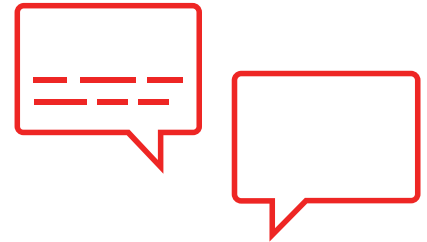




# Causes of claims

## Poor communication

A lack of common understanding between the solicitor and the client. e.g. A solicitor does not appreciate the expectations of the client, or the client does not listen to/understand the solicitor's advice



## Causes of claims

<b>Poor communications with clients</b>	<b>36%</b>
Client instructions not followed	9%
Failure to advise	16%
Failure to define extent of retainer	2%
Failure to obtain instructions	2%
Incomplete explanation and/or advice	7%
<b>Document problems</b>	<b>21%</b>
Drafting error	8%
Failure to check documentation	13%

## Causes of claims cont'd

<b>Systems problems</b>	<b>16%</b>
Delay	10%
Lack of file maintenance	0%
Lack of supervision of staff	1%
Oversight	1%
Cyber	4%
<b>Not knowing the law adequately</b>	<b>17%</b>
Incorrect advice	12%
Lack of legal knowledge	5%
<b>No negligence</b>	<b>10%</b>

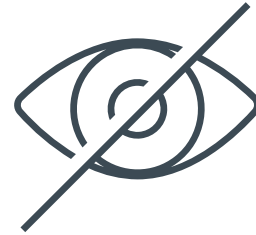


# Clients

## Clients who bite

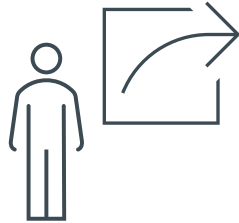


The disappearing client -  
fails to respond

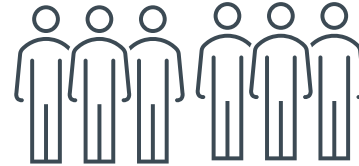


The don't involve me client –  
wants solicitor to make  
decisions

# Clients who bite



The transferred client -  
won't pay former solicitor  
fees



The extended family client –  
who is the client?

# Clients who bite



The experience  
claimant client -  
notorious fee dodger



The non-English  
speaking client -  
Who is interpreting



The family and friend  
client – potential for  
conflict and lack of  
detailed file notes

# Barriers to shared understanding

Many clients find the experience of dealing with a solicitor very uncomfortable





# Dealing with the client

- Not enough time devoted to initial interview
  - Failure to probe deeply enough
    - Failure to explain advice effectively
      - Too quick to find a solution (failing to advise of all solutions)
        - Not enough time devoted to routine advice
          - Failing to define the retainer
            - Failing to confirm advice given in writing (letter to client and in file notes)

# Dealing with the client

- Professional negligence claims arise from failures in a solicitor's basic interpersonal skills
  - In essence, failures to listen, ask and explain:
    - Not enough time devoted to initial interview
    - Failure to probe deeply enough
    - Failure to explain advice effectively
    - Too quick to find a solution (failing to advise of all solutions)
    - Not enough time devoted to routine advice
    - Failing to define the retainer
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# Employee supervision

# Why is supervision important?



Australian Solicitor Conduct  
Rules – Rule 37

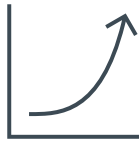


Manages risk

# Why is supervision important?



Staff development and satisfaction



Leverage



Client satisfaction and retention

# The impact of poor supervision

*Legal Services Commissioner v Dingwall* [2017] QCAT 76

- No supervision or feedback
- No file reviews
- No clear supervisor
- No formal risk management plan in place

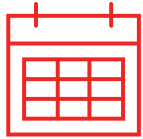
# The impact of poor supervision

*Victorian Legal Services Commissioner v Ibidapo Olayemi* [2019] VCAT 1283

- Visa application matter
- Wrong category chosen from drop-down list
- Visa refused, bungled coverup, lied to client
- Poor supervision, struggling with workload

# Supervision structure

## Make time



Block out designated  
times



Stick to scheduled  
meetings

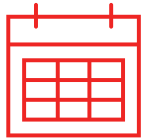


Plan ahead and  
organise your workload



# Supervision structure

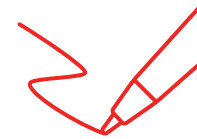
Carry out regular file reviews



File review schedule



Flag and discuss issues  
and provide  
constructive feedback



Document and follow  
up actions

# Supervision structure

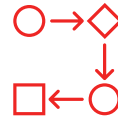
## Checklists



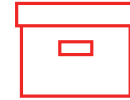
Client  
identification



Conflict of  
interest



Matter  
workflow



File closing

# New Lawyer Accelerator Program

- Lawcover sees claims arising from failure to properly supervise new lawyers
  - Senior lawyers are often overstretched, demanding workloads, difficulties to provide consistent training. Remote working can make training more ad hoc
  - The New Lawyer Accelerator Program provides new lawyers with 20 hours of on-line, on-demand consistent training on basic practical legal skills like taking instructions from clients, preparing briefs to counsel, managing workloads
    - Ref: [lawcover.com.au/new-lawYer-accelerator-program/](http://lawcover.com.au/new-lawYer-accelerator-program/)



# Why poor business management is a risk

Why poor business management is a risk

Common characteristics of claims prone practices

# Strategic plan

## Your future practice

	Description	Your Practice
<b>Vision</b>	<p>What the organisation wishes to be like in some years' time. Takes the thinking beyond the day to day.</p> <p>A well-conceived vision defines the aspirations of where a business wants to be in some years' time and is simple and memorable. It is an overarching statement of the business and is closely tied to values and goals.</p>	
<b>Mission</b>	<p>Sets out the steps to reach your goal. The how we will do it. (This may be to maintain status quo). Ties in with strategy.</p>	
<b>Values</b>	<p>Articulated as a list of principles.</p> <p>Describes desired culture.</p> <p>A behavioural compass to all staff.</p> <p>Published values also say something to the clients about the business.</p>	
<b>Goals</b>	<p>Relates to strategy and vision.</p> <p>Encompasses where the firm wants to be, what it is aiming to achieve.</p>	

# SWOTs and Horizon gazing

Strengths	Weaknesses
Opportunities	Threats


# SWOTs

Strengths	Weaknesses
<ul style="list-style-type: none"><li>&gt; Whole of practice</li><li>&gt; Legal services areas</li><li>&gt; Key clients</li><li>&gt; Government policies</li><li>&gt; Fee earners and support staff</li></ul>	<ul style="list-style-type: none"><li>&gt; Economic conditions (domestic and international)</li><li>&gt; Other identifiable influences e.g. location, layout, marketing, succession</li></ul>
Opportunities	Threats




# Horizon gazing

Emerging Developments	Challenges/ Threats	Opportunities
1.		
2.		
3.		
4.		
5.		
6.		

 Feeding into the law practice's business plan

# Horizon gazing

Emerging Developments	Challenges/Threats	Budget impacts	Opportunities
1. Legal practice overall			
2. Practice areas			
3. Technology / AI			
4. Cyber crime risk management			
5. Regulatory reforms			
6. Recruitment			
7. Education / training needs			
8. Other ...			

 Feeding into the law practice's business plan

# Business Plan

How do you plan?

- Legal services offered
- Legal services not offered
  - The ideal client ...

# Business Plan

## Financial plan

- Budget
- Profitability
- Cash flow
  - WIP, debtor days, invoicing
  - Pricing policy
  - Discounting to validate
  - Retained capital

# Business Plan

## Marketing and client communications

- Budget
  - Forms of marketing
    - Client relationship development
      - Testing / validating

# Business Plan

## IT plan

- Budget
  - Technology, PMS
    - Systems security – back ups, checks
      - Data security
        - Cyber plan - cyber risks and support

# Business Plan

## People plan

- Budget
- Recruitment
- Induction
  - Education and training
  - Leadership: mentoring; supervision
  - Wellbeing, stress management



# Practice health and personal health



# Lawcover's Risk Management Practice Health check

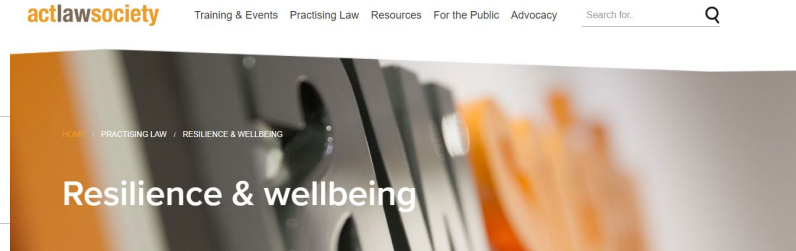
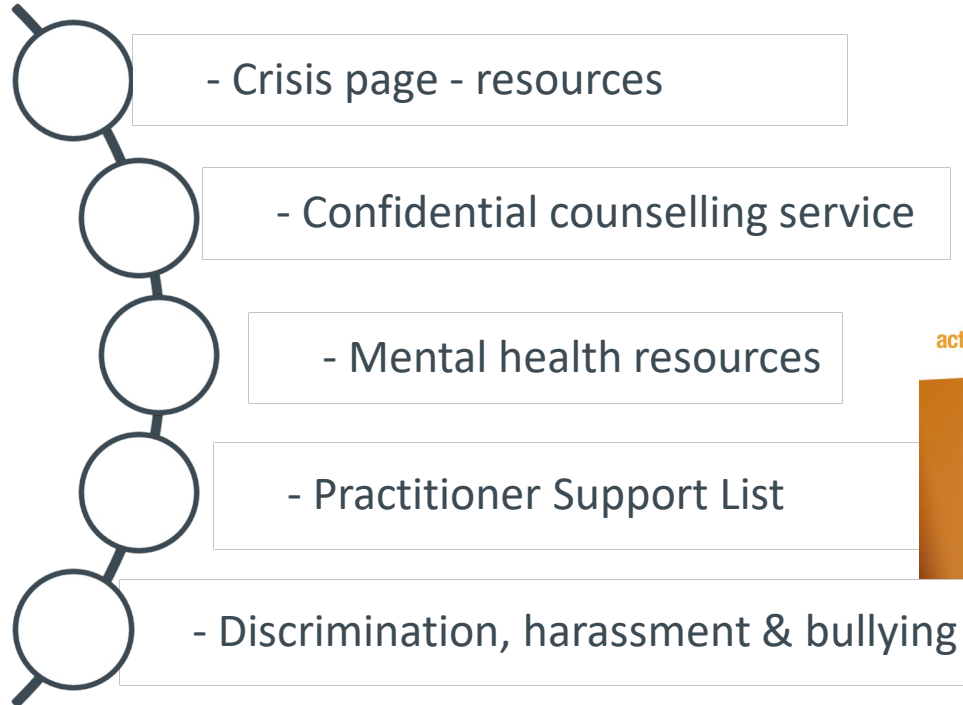
## Practice Health

### Lawcover's Risk Management Practice Health Check

These questions have been collated by Lawcover to reflect adverse risk scenarios that have occurred in actual professional negligence claims against solicitors.

		Please tick (✓)	
		Yes	No
<b>A</b>	<b>Client Engagement Management</b>		
1	Do you only accept matters in areas of law that are routinely practised by your law practice?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you identify your client? (for example, by completing a '100 point' check of identity on all clients?)	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you complete a conflict search on each new matter before accepting instructions?	<input type="checkbox"/>	<input type="checkbox"/>
4	Do you use an interpreter if the client finds it difficult to understand English?	<input type="checkbox"/>	<input type="checkbox"/>
5	Do you set aside sufficient time for the initial client interview?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you confirm your instructions in writing?	<input type="checkbox"/>	<input type="checkbox"/>
7	Does your written confirmation contain the following:		
	> deadlines?	<input type="checkbox"/>	<input type="checkbox"/>
	> a summary description of the features and duration of the work which you expect will be done?	<input type="checkbox"/>	<input type="checkbox"/>
	> the name of the person(s) who will do the work?	<input type="checkbox"/>	<input type="checkbox"/>
	> applicable time limits and the consequences if the limits are missed?	<input type="checkbox"/>	<input type="checkbox"/>
	> costs disclosure (amount of, basis upon which you charge, right to assessment, estimate)?	<input type="checkbox"/>	<input type="checkbox"/>

# ACT Law Society – Resilience & wellbeing



# Resources

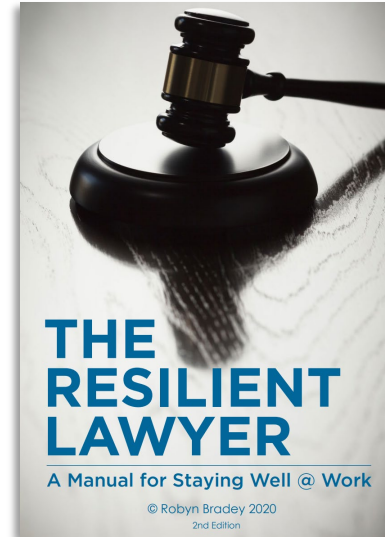
Stress, you and your practice



Risk on Air podcast

[lawcover.com.au/risk-on-air/](http://lawcover.com.au/risk-on-air/)

Mental Fitness and Legal Practice



[lawcover.com.au/personal-wellbeing/](http://lawcover.com.au/personal-wellbeing/)

# Risk Management

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