

If you are faced with a claim, don't hesitate – notify LawCover

By PETER DRIESSEN

Being faced with a claim from a client can be a shocking experience. However, delayed or, worse, no notification to LawCover will seriously prejudice your case.

Practitioners' reactions vary when faced with a claim by a client or former client – shock, horror, anger, disappointment. Whatever the reaction, it is important to deal with the claim and not ignore it.

The first step is always to contact LawCover. The LawCover claims team is ready to help. It is always the easiest and most effective response to simply notify the team by email, fax or letter and let us speak to the claimant and investigate the claim.

Each year a number of claimants, either in person or through their lawyers, approach LawCover directly in their efforts to pursue a claim against a practitioner. Nearly always this is on an unlitigated or pre-litigation basis.

Unfortunately, in many instances they have already written to the practitioner setting out their claim and have received no response. LawCover, as the well-known insurer of solicitors, is the next port of call in the attempt to be heard.

However, LawCover cannot deal with claimants directly unless there has first been notification by the practitioner or the law practice against whom the claim is made. On receipt of a claim, it is the law practice or practitioner who makes the decision to notify LawCover and seek indemnity under the insurance policy.

In some circumstances, lawyers may choose to deal with a complaint or claim themselves. But why would you want to handle the claim yourself? Even when the amount falls within your excess with only a small likelihood of exceeding it, in most circumstances

the worry, effort and expense involved, as well as the potential liability, is best shared with your insurer.

Ignoring a client claim and LawCover requests

In a recent case the insured solicitor acted for a client in relation to a loan secured by way of a caveat over a property. The insured allowed the caveat to lapse. The borrower went into liquidation and the client's loan was not repaid. The client made a claim against the solicitor, who ignored it.

The solicitor also ignored LawCover's requests to submit a completed claim form. The client commenced proceedings and eventually obtained default judgment against the solicitor.

As a result of the solicitor's silence, the client proceeded to make a claim directly against LawCover. After a lengthy period of time the solicitor finally notified us of the matter. By then the interest on the damages had substantially increased the quantum of the claim.

The solicitor was also in breach of the terms and conditions of his policy for late notification and substantially prejudiced LawCover's ability to investigate liability and resolve the matter advantageously.

In another case, the solicitor simply refused to notify LawCover or provide any assistance in relation to a significant claim arising from a failure to register a mortgage or obtain

deeds of priority from the prior mortgagees on title.

The solicitor had ceased practice but continued to reside in the jurisdiction and was easily locatable for service of process.

Despite numerous requests from LawCover to notify the claim and provide a response to the claimant's allegations so that the matter could be objectively investigated, the solicitor refused to do anything.

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The claimant's only recourse was to obtain judgment against the solicitor personally, bankrupt him, and then obtain an assignment from the trustee to make a claim on the solicitor's insurance. The outcome would have been quite different and much less harsh if only the solicitor had cooperated with his insurer.

When a claim can be made directly against an insurer

There are circumstances where a claim can be made directly against an insurer. Section 51 of the *Insurance Contracts Act 1984* (Cth) provides



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third parties with a right of recovery. The section provides: “(1) Where:

(a) the insured under a contract of liability insurance is liable in damages to a person (in this section called the third party);

(b) the insured has died or cannot, after reasonable enquiry, be found; and

(c) the contract provides insurance cover in respect of the liability;

the third party may recover from the insurer an amount equal to the insurer's liability under the contract in respect of the insured's liability in damages.

(2) A payment under subsection (1) is a discharge, to the extent of the payment, in respect of:

(a) the insurer's liability under the contract; and

(b) the liability of the insured or of the insured's legal personal representative to the third party.

(3) This section does not affect any right that the third party has in respect of the insured's liability, being a right under some other law of the Commonwealth or under a law of a State or Territory.”

Protection for the profession

Professional indemnity insurance exists to protect practitioners in the unfortunate event of a claim. LawCover's claims team is dedicated to assist and support practitioners with professionalism and empathy, so that a claim is not ruinous to either someone's financial position or reputation. □