

COVID-19 and Risk Management Challenges for Law Practices

New and unexpected challenges

For many solicitors the need to comply with COVID-19 restrictions has presented new and unexpected challenges to the way we work. At the same time solicitors have needed to keep up with a flurry of changes to the legal framework as State and Federal governments have introduced temporary measures aimed at reducing the economic impact of the COVID-19 restrictions. Managing risks in legal practice has become simultaneously more difficult and more critical.

File management

Despite a positive trend towards maintaining electronic files, many legal practices still keep files in paper form, at least in part. When the person, or team, responsible for a particular matter is working remotely, without access to a physical file, there is a heightened risk that critical information could be overlooked. How this risk is best managed will vary depending on the nature of the matter, but some options involve recreating files from scanned and emailed documents or physically retrieving paper files where necessary.

Communication

Most claims against solicitors arise from communication problems between solicitors and their clients, involving either a failure to properly understand the client's needs or a failure to provide the advice needed by a client to effectively weigh their options. A face-to-face meeting can help to ensure a common understanding between a solicitor and their client. For example, when preparing for a hearing, or discussing settlement options, physical cues can play an important role in eliciting unasked questions or unexpressed problems. Similarly, when advising a purchaser on a contract for sale, a face-to-face conversation can help the solicitor clarify the purchaser's objectives and identify any concerns.

If face-to-face meetings are not an option, it is important for solicitors to make good use of video-conferencing, telephone and email communications while also being mindful of the limitations of those options.

Supervision

Working remotely poses challenges, even for established solicitors. However, those who are new to the law, or to a particular legal practice, face a greater challenge and extra effort is needed to ensure they are properly supported.

Tips for the remote supervision of team members include:

- ▼ Maintaining frequent (at least daily) contact
- ▼ Having systems for promptly reviewing work and providing feedback
- ▼ Keeping up with file reviews
- ▼ Taking time to discuss important issues like identifying, and managing, conflicts of interest and maintaining client confidentiality.

Keeping up with the changes

If change is the only constant in life, never has this been more true than now thanks to the measures introduced to address the COVID-19 crisis.

Some of these changes, such as the NSW regulation permitting the witnessing of documents by video link, have a direct bearing on the way that legal work is performed.

Others, such as the changes to insolvency laws and the commercial tenancies code of conduct for small and medium-enterprise tenants, affect our clients and the nature of the legal advice they need. When solicitors stay up-to-date, and check the current state of play before giving advice, problems can be avoided for both law firms and their clients.

This is a time of unexpected change and heightened stress for us all. Importantly, the legal profession has demonstrated that it is adaptable and resilient, performing an important role in supporting clients in this challenging environment. Keeping a close eye on managing risk, while managing your law practice, will put you in a strong position to successfully negotiate our new environment and then transition to a more normal working environment.

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