

# Ticking time bombs?

A lack of appropriate practice systems and diligence can result in easily-avoidable claims.

Limitation period “time bombs” have caught many solicitors off guard. Claims arising out of limitation issues, such as failing to diarise or manage calendars properly or failing to determine or act within a specific limitation deadline, constitute a high percentage of the professional negligence claims presented to Lawcover.

In the past, these claims have largely arisen from a solicitor “missing” a limitation period on a personal injury compensation claim relating to a work accident, a motor accident or an accident occurring on premises. These days, Lawcover is seeing an increase in missed limitation periods arising from contractual disputes, family law, family provision, rectification of wills, superannuation and employment law disputes.

## Identifying relevant limitation periods

Identifying **both** the limitation period applicable to a matter, and the commencement date of that period, is imperative. Reference to the legislation governing a particular matter can make identification of the relevant limitation period straightforward. However, it’s more difficult to identify when a period commences or “runs from”. This is further complicated by the myriad of potentially applicable legislation. For example, the commencement of the limitation period may vary from being a defined date, such as the date of accident or date of death, to being a descriptive date – such as when the cause of action arises or is discoverable – and varies depending on the cause of action being pursued. A client may have more than one cause of action arising from any loss and this should be borne in mind.

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Solicitors need to carefully identify the commencement of the relevant limitation period as this will determine its expiry.

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## Transferred files

Solicitors often find unidentified, or incorrectly identified, limitation periods on receipt of a “transferred file”. Before taking on a matter, a prudent solicitor should advise the client that various enquiries need to be undertaken. This may include:

- ▼ Conflict checks
- ▼ Assessment of the matter – does the practice have the required expertise and resources to handle the matter at that particular time?
- ▼ Whether the prior law practice’s fees have been paid
- ▼ Checking of limitation periods.

## Compliance with the limitation period

Assuming the relevant enquiries have been made, and that the relevant limitation period dates have been correctly identified, it will then be necessary for the solicitor to implement systems to ensure compliance with the limitation period. This is best done by ensuring effective practice and diary tracking systems which can help monitor deadlines and key dates.

This may include:

- ▼ Electronic diary and file management
- ▼ Calendar reminders and deadline alerts
- ▼ Systematic peer file reviews
- ▼ Periodic file audits.

#### **Advising of the limitation period**

It is also important for the solicitor to advise the client of the impending expiration of a limitation period, particularly if the client is slow to respond to requests for instructions. Placing advice about limitation periods in writing can be the

difference between successfully defending a claim and being forced to settle. Always keep contemporaneous and detailed file notes.

For matters arising in NSW or NT, refer to [Lawcover's Schedule of Limitation Periods](#). While these schedules are helpful as a general guide, solicitors should remember that they do not include **all** limitation periods and are not intended to substitute for appropriate legal advice research and diligence conducted by solicitors.

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