



**A Systemic Approach to Risk Management
Managing the Risk of a Professional Liability Claim**

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Risk

Format of the Presentation

Context

- Key Concepts
- The Risk Management Strategy

Practical Application

- Gathering Knowledge and Analysis
- Providing Education
- The Guidelines

What practically should I do?
What will Law Mutual do?



What is Law Mutual (WA)

Part of the Law Society of WA

Administers the compulsory insurance arrangements to the profession

Provides risk management services

Professional Liability Risk Management

What is 'risk'

What is meant
by 'managing
risk'

Why should we
manage risk

Professional Liability Risk

The chance that a claim will be brought against you for breach of your professional duty to a client

Managing Risks

How a professional (or practice) manages the likelihood and impact of future events (that may or may not happen)



Why Manage Risk

The profitability of any business depends on it taking risks and managing them well

Financial risks

Reputational risks

Health and safety risks

Professional liability risks

Risk Management Strategy

An ***integrated, planned approach*** to providing risk management support will ***deliver*** insureds' ***benefits*** through ***encouraging*** improved risk management ***culture and practices*** in insureds' firms, ***resulting in*** enhanced client relationships and reduced liability risk exposures

Strategic Objectives

The long term goals of risk management at Law Mutual are to:

- ***decrease claims costs*** by an appreciable amount evidenced by a reduced incidence of claims per practitioner.
- ***increase the reputation*** of those members of the legal profession insured by Law Mutual evidenced by the reduction of complaints of practitioner's negligence.
- ***improve the legal services*** offering available to members of the public through better managed legal practices evidenced by an uptake in practices utilising effective risk management systems.

Our Principles

Our risk management focus is limited to our professional liability mandate

We will apply recognised risk management principles and techniques

We will maintain an overall risk profile of insureds

We consistently seek to recognise emerging trends within practices and in the community that impact professional liability exposures

Information management control, capture and analysis is fundamental to informing our understanding and communicating professional liability risks

There must be an integrated and equal focus on the past (lessons), the present (control) and the future (risk) to inform planning and priorities

We will use consistent language for communicating risk management information

We will segment practitioners and firms so that risk management services and advice can be targeted and tailored

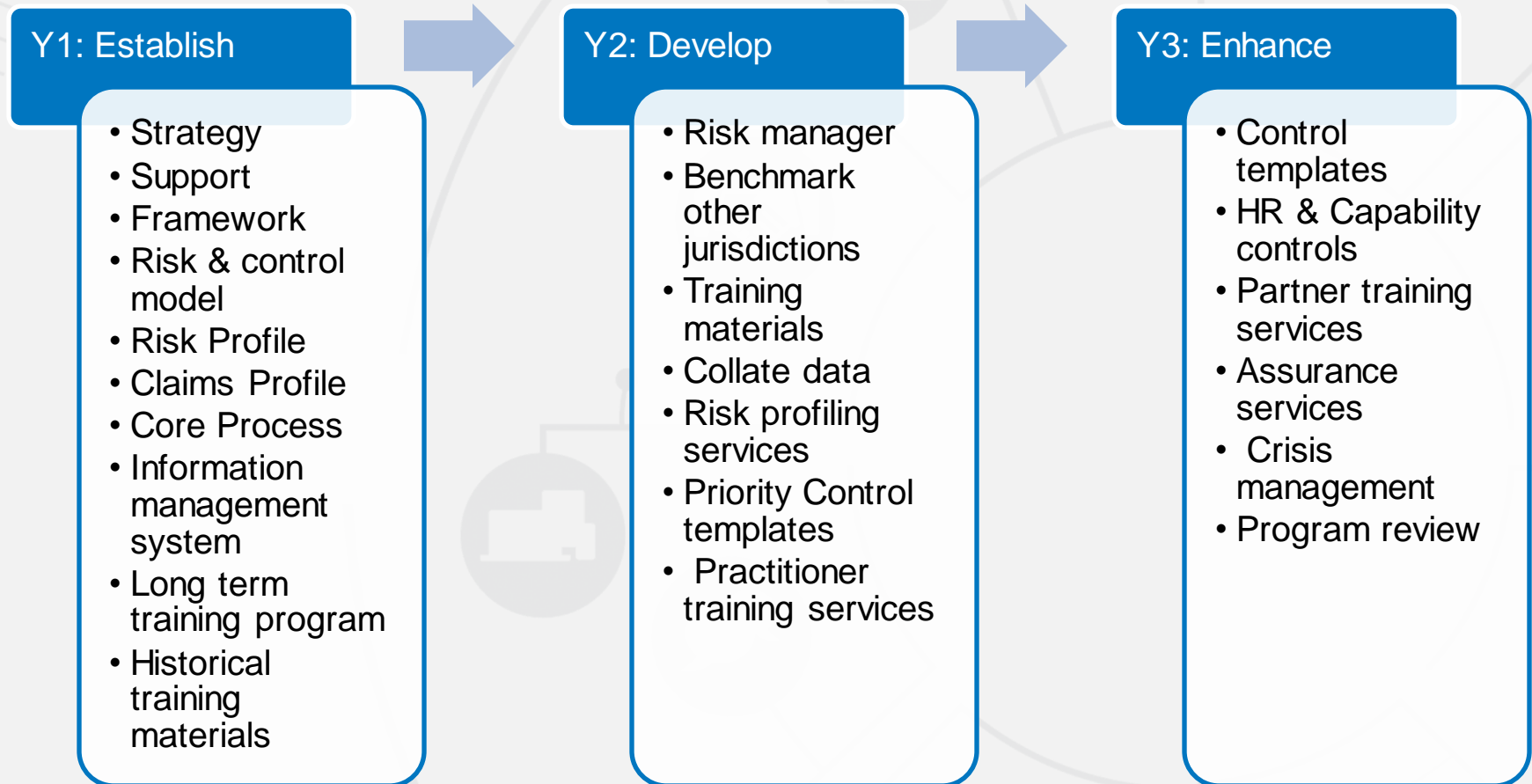
We will leverage information technology to continually engage with insureds on what they perceive to be issues and priorities

We will capture claims information to inform lessons learned, understanding of risk and priorities

Training will be fully integrated with the risk management programme so that there is consistent and coordinated messaging and activity on priority risk topics

Training will be interactive and involve both expert advice and group facilitation on priority risk areas to inform and engage practitioners

Risk Management Plan



Risk Management Framework

The overall structure within Law Mutual for providing professional liability risk management services to insureds. It requires:

- A clear commitment and expectations for risk management across insureds;
- Defined and measurable goals that demonstrate whether Law Mutual and insureds are performing;
- An organisational structure within Law Mutual and joined to insureds that is aligned and accountable for delivering the risk management program;
- Resources, both external and internal to Law Mutual who, collectively, have the capability and capacity to provide expert input, advice and facilitation;
- **Information management system that enables effective capture, analysis and communication of all relevant information to support improved risk management practices. This includes claims data and voting technology;**
- Documentation that is easily accessible, practical and relevant to the needs of insureds;
- Channels for effective, ongoing, two way communication between Law Mutual and insureds;
- **Clearly defined, consistent and practical lessons, training, assurance and control processes that support ongoing activity and continuous improvement;**
- Feedback, review and assurance processes that provide independent assurance that the programme is in place, applied and is effectively working

Risk Management Policy

Law Mutual commits to:

- Providing leadership by setting a clear direction and structure for risk management activities
- Continually consulting with Insureds and other key stakeholders to understand their needs
- Facilitating Insureds in structured forums to enable them to understand and address risk
- Recognising the diversity of needs amongst our Insureds and engage with them accordingly
- Recognising and appropriately rewarding good risk management practices and performance
- Capturing and communicating knowledge for continued understanding of change, insight into risk and improvement of practices
- Providing assurance that Insureds are effectively managing risk
- Influencing government to provide legislative support for improved risk management practices

It will encourage Insureds to:

- Attend and actively participate in risk management education and workshop forums
- Adopt risk management practices recommended by Law Mutual
- Share knowledge and experience to assist other Insureds to improve risk management

To achieve the following:

- Improve the level of practice management by increased uptake of fit for purpose risk management practices
- Decrease the number of complaints and enhance the reputation of Insureds
- Long term reduction in claims per insured practitioner

What Have We Done

2015/2016 - analysed all claims for the insurance years 2011-2014 to understand the key causes of claims and how claims correlate to practice size and area of law.

2015 –published a Risk & Control Map that generically sets out the risks and controls for professional negligence claims across the four stages of matter management (screening, engagement, providing services and close out).

2015/2016 seminars – introduced the ‘new approach’ and 2200 practitioners were polled on their views on highest risks in their practice, implemented controls and controls that should be implemented. This was done by reference to the Risk & Control Map.

Polling information was cross referenced with the claims analysis and resulted in the publication of the Professional Liability Risk Profile Analysis.

What Have We Done (cont.)

2017 (and subsequently refined) - published Practice and Matter Guidelines, in part based on the Analysis.

2017 to present - Guidelines have been the subject of risk management seminars.

2018 to present - workshops and pilot studies have tested the practical efficacy of the Guidelines and refined them in response to feedback.

2019 - developed a system (Risk Data Capture) to record risk management data in relation to claims. It will allow root cause analysis to gain an understanding of the systemic issues giving rise to claims and address these in future risk management training programmes.

2020 - focused on revising the identified underlying causes through further analysis of the 2019 and 2020 closed claims.

Annual Training Programme

Based on risk
management
priorities

Structured towards
tangible
improvement in
claims prevention
among firms

Linked to practical
guidance and
support

Where possible
tailored to firm size
and practice area

3 Year Training Programme

Training Area	2018	2019	2020
Risk management	Introduction to risk management Screening + engagement	Introduction to risk management	
Practice management	Supervision and delegation	Managing firm growth	Strategy and risk appetite
Matter management	Screening matters and clients Scoping work	Client management during delivery Providing	Deadlines + limitation periods
Legal services	Screening – conflicts + client identify Client engagement agreements	Litigation risks 3rd party expert risks Terminating a retainer	Non-litigation risks Managing claims resolution

Other Resources

Risk & Control Map

Professional Liability Risk Profile Analysis

Practice and Matter Management Guidelines

Control Templates

- Matter conflict checklist
- Standard instruction form
- Template engagement agreement
- File management checklist
- Document management procedure
- Client instruction form
- File review checklist

Quarterly Newsletter

Risk Alerts

Matter Management

Requirements for 4 phases of legal service delivery



Screen

Engage

Provide

Complete

Practice Management

- Requirements grouped around 5 element of a management system



What are 'requirements'

The things a law practice or lawyer needs to do to prevent claims.

Activity	Requirement
Ensure ongoing supervision	Ensure supervisor regularly meets with and reviews the work of the practitioner who conducts the matter
	Ensure supervisor reviews any legal advice prior to communicating it with the client.

Not 'one size fits all'

Not all requirements are mandatory for all firms

Activity	Requirement	Mandatory	Sole Practitioner
Ensure ongoing supervision	Ensure supervisor regularly meets with and reviews the work of the practitioner who conducts the matter	✓	
	Ensure supervisor reviews any legal advice prior to communicating it with the client.	✓	

What are controls



Examples of Controls

The sole practitioner might	The mid tier practice might also	The larger practice might also
Use checklists	Use core procedures and basic systems to aid decision making and checking	Use policies and procedures and systems for consistent delivery
Maintain good general precedents and forms	Maintain good specialist precedents and forms	Research and draft position papers
Engage external legal and practice reviewers	Have strong supervision requirements	Implement peer review and/or internal audit review

What controls are appropriate is usually left to the practice

Activity	Requirement	Potential Control	Mandatory	Sole Practitioner
Ensure ongoing supervision	Ensure supervisor regularly meets with and reviews the work of the practitioner who conducts the matter	Supervision procedure, guidance or checklist addressing correspondence, meetings, matter review, authorities, availability and work allocation.	✓	

Questions

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