



LEGAL
PRACTITIONERS'
LIABILITY
COMMITTEE

Managing Practice Risk: Conflicts, Conveyancing, and independent advice for BFAs

PRESENTED BY:

Jamie McCallum

Prevention & Risk Manager

& LIV Accredited Property Law Specialist





Acknowledgement
*of traditional owners
and country*

I acknowledge the Wurundjeri Woi Wurrung and Bunurong People of the Kulin Nation as the Traditional Owners of the land on which we meet today. I pay my respects to their Elders past and present, and extend that respect to all Aboriginal and Torres Strait Islander peoples.

Why do mistakes matter to solicitors?



Client claims against you



Stress



Reputational damage



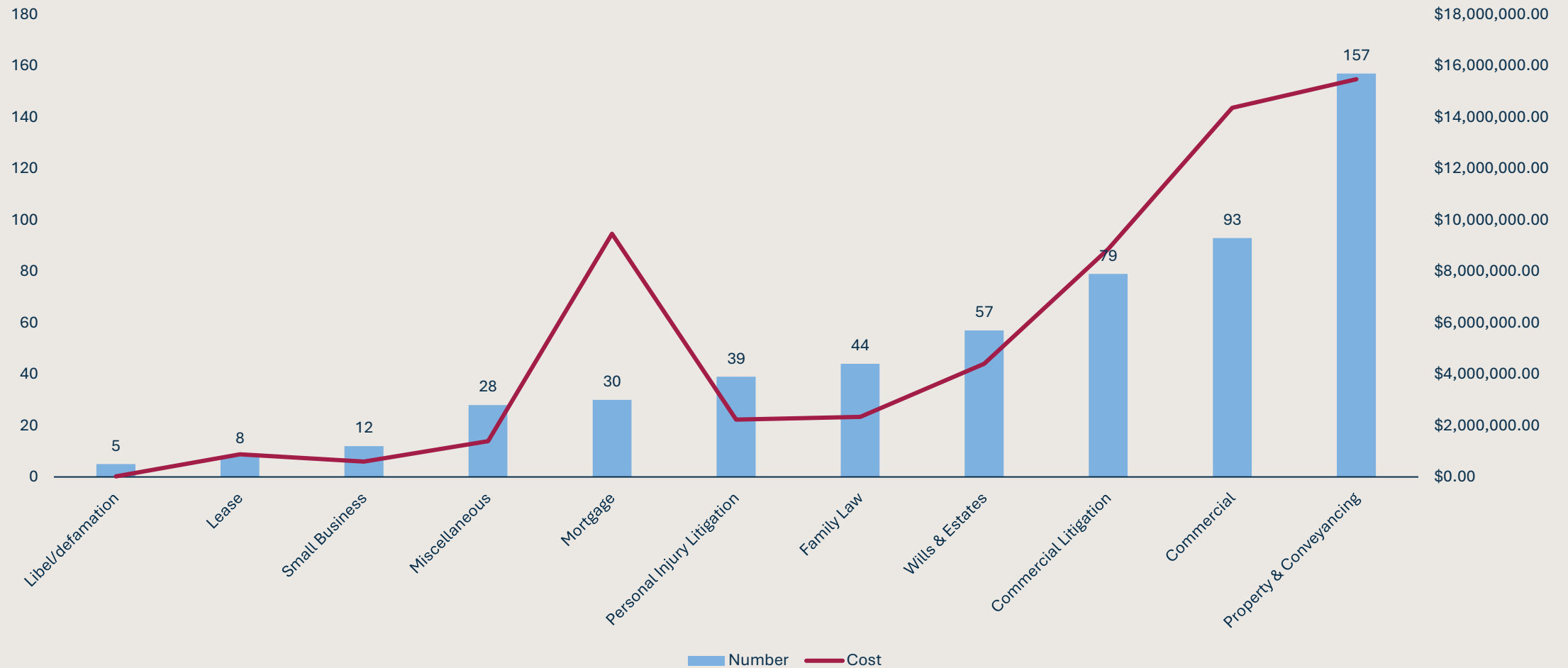
Financial costs



Time spent dealing with a mistake or claim

Combined claims data | 2025 - 2026

2025-2026 Policy Year Claims Data



Work Intake and Clients - Can I act, and should I act?



QR code to access SLIDO



Question 1 – Guarantee advice

- You are approached by long standing clients to provide guarantee advice and solicitors' certificates.
- The clients are a husband and wife.
- The husband is the sole director and shareholder of a company that operates a small business.
- The company needs a loan from a private lender, and the lender will only provide the loan, if the husband and wife provide guarantees in favour of the lender.
- The clients want you to provide the advice, because they have dealt with you before (particularly for the husband's company) and you have acted on the purchase of the family home (which is in the name of the wife).
- The clients are happy to be seen by you separately, so that 'they get independent advice'.
- You have not provided guarantee advice before, but you are not busy and have the time to take on the matter.



Question 1 - Guarantee advice - Do you?

Acting for multiple parties – conflict of interests

- Acting for multiple parties is high risk
 - Who is your client?
 - Did a party feel pressured to sign by the other party?
 - Was your advice objective?
- Your duties as a lawyer under the [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](#), and the duty to avoid conflicts for:
 - Former clients (rule 10) and,
 - Current clients (rule 11)
- If you act for multiple parties in a transaction, how would you defend your actions in Court?



Double trouble – double excess

Clause 5 of the LPLC 2026-2027 (defence costs exclusive excess) policy states:

- 5. Deterrent excess
 - The Insured will bear (in addition to any part of the loss which is excluded from cover under this contract) the first amount of each and **every loss up to twice the specified amount**, arising from any of the following. The deterrent excess does not apply to defence costs.
- 5.2 Multiple parties or interests
 - Any matter or transaction in respect of which the Firm acted for or represented **more than one party or interest**.



Dabbling

Providing advice outside of your area of expertise, increases the chance of a mistake occurring or the client receiving incorrect advice, and is like playing with...



Work Intake & Retainer Management



Right Client

Who is the client? – corporate, individual, trust, couple, joint venture

Do they have capacity, authority, right to deal?

Any conflicts?



Right Matter

Within firm's area of expertise/business strategy?



Right Time

Do we have the

- resources
- time
- staff

to do this matter well?

**You provide BFA advice, what are
good risk management practices?**



Question 2 – Family Law BFA

- You are approached by a couple who are about to get married, and they want you to prepare a binding financial agreement.
- You have previously acted for both of them in various matters.
- The couple tell you that they have agreement on all of the key terms, and just need the BFA documented and signed.
- They don't want to see other lawyers because they trust you, and your fees are more reasonable than your competitors.



Question 2 - Family Law BFA - Do you?

Suggested steps when dealing with high-risk BFA's



Know the law and only act for one party



Have client intake forms to obtain key information, such as assets



Review the documents in advance of the client meeting



Assess whether there is sufficient disclosure of assets. Is there missing information? Do further enquiries need to be made?

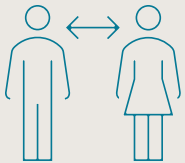
Suggested steps when dealing with high-risk solicitors' BFA's (continued)



Consider any amendments that may need to be made to the BFA (e.g. insufficient disclosure of assets, unfair terms)



Provide the client with written advice in advance of the meeting (see sections [90G](#) and [90UJ](#) of the *Family Law Act 1975*(Cth))



Discuss your written advice with the client at the meeting (see sections [90G](#) and [90UJ](#) of the *Family Law Act 1975*(Cth))



Ask the client to explain in their own words what are the consequences of the BFA that they are going to sign

Suggested steps when dealing with high-risk solicitors' BFA's (continued)



Take detailed notes of the clients understanding and responses



If the client appears to not understand, is rushing to sign, is being pressured to sign or further amendments need to be made to the BFA, it is recommended that the client does not sign the BFA until they have had further time to consider or the required amendments have been made to the BFA



Provide a post meeting letter of advice confirming what was discussed at the meeting, including any key information, such as why the client wanted to sign the BFA, the client's understanding of the BFA or any amendments that you recommended



Refer to the case of [*Thorne v Kennedy*\[2017\] HCA 49](#)

**You provide guarantee and solicitor's
certificate advice, what are good risk
management practices?**



Suggested steps when dealing with high-risk guarantee advice and solicitors' certificates



Know the law and only act for one party



Have client intake forms to obtain key information



Review the guarantee documents in advance of the client meeting

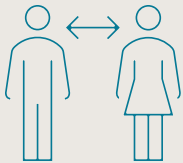
Suggested steps when dealing with high-risk guarantee advice and solicitors' certificates (continued)



Provide the client with written advice in advance of the meeting



Perform the Verification of Identity on the client in person and face to face. **NO REMOTE VOI**



Discuss your written advice with the client at the meeting



Ask the client to explain in their own words what are the consequences of the guarantee (and any security) that they are going to sign?

Suggested steps when dealing with high-risk guarantee advice and solicitors' certificates (continued)



Take detailed notes of the client's understanding and responses



If the client appears to not understand or is being pressured to sign, it is recommended that the client does not sign the guarantee documents, until after they have had further time to consider



Provide a post meeting letter of advice confirming what was discussed at the meeting, including any key information, such as why the client wanted to provide the guarantee, and the client's understanding of the guarantee

Conveyancing risks



Common vendor claims

- Defective section 32 statements
- Owner-builder issues





Which certificates do you obtain when preparing a section 32 statement?

① The Slido app must be installed on every computer you're presenting from

A certificate could have helped...

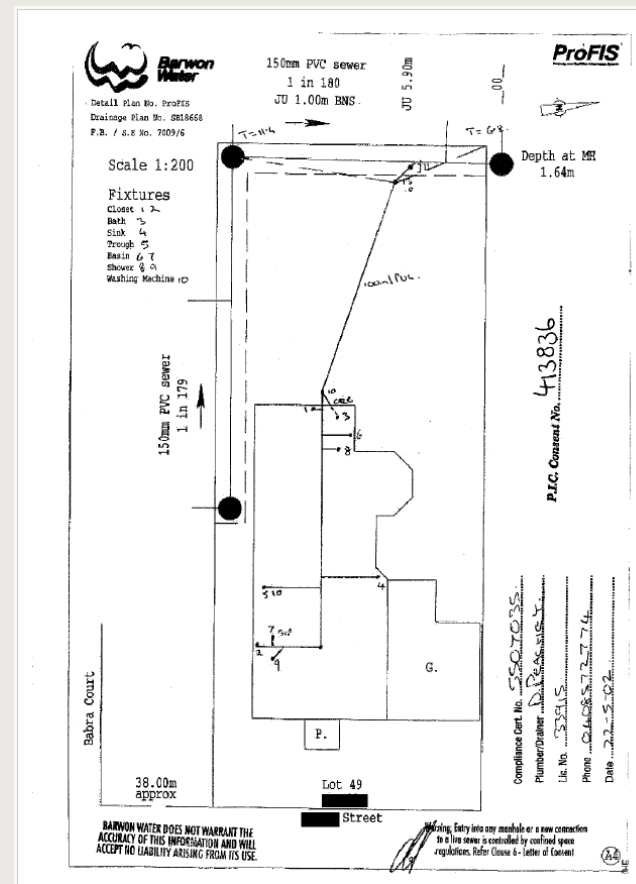
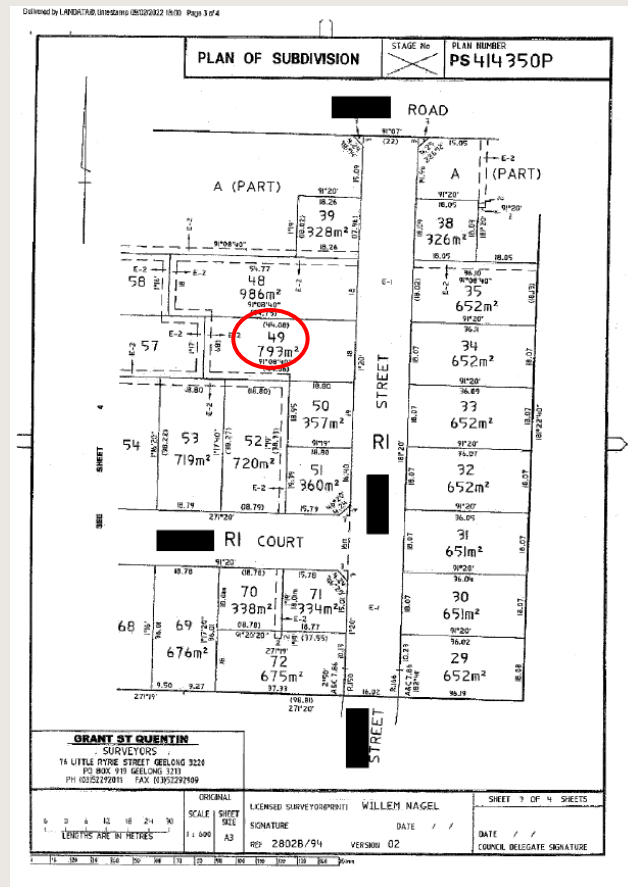
A common scenario....

- Solicitor acts for the vendor on the sale of a property in an older Melbourne Suburb, the property is worth \$1.2 million, and a 10% deposit of \$120,000 is payable by the purchaser upon signing.
- Prior to settlement the purchaser realises that there is an unregistered sewer easement located within the property and not shown on the title diagram included in the section 32 statement.
- The purchaser then terminates the contract and demands a full refund of the deposit.
- The vendor has lost a sale, and now has to pay commission to the selling agent.
- Vendor has to re-sell in a declining market?
- The potential loss suffered by the vendor client is huge.

A certificate could have helped...

A common scenario....

In many cases if the vendor solicitor had obtained a water information certificate with the asset plan attached or a sewers and drain map, and annexed it to the section 32 statement, then this issue could have been avoided.



Owner-builder

- Owner-builder also applies to building works that are not structural, can include:
 - Installing a new kitchen or bathroom
 - Enclosing a veranda with fly screens
 - Moving an internal door including plastering and painting the walls
- Need to be able to ask the client the right questions and then assess whether owner-builder applies.
- Owner-builder issues matter, if section 137B of the *Building Act 1993* (Vic) applies, and is not complied with before the contract signing, then the consequences can be **brutal**.
- Purchaser may terminate any time prior to settlement.
- Drop dead, no vendor defence mechanism like section 32 of the *Sale of Land Act 1962* (Vic).



Resources



Checklists:

- [Sale of land - questions for the vendor](#)
- [Vendor practitioner section 32 statement and contract checklist](#)
- [Purchase of land – questions for the purchaser](#)

Webinars:

- [Owner-builders and the section 32: How the law changed on 1 July 2026](#)
- [Solicitors' Certificates and Guarantee Advice](#)
- [Tech Solutions for Risk Reduction in Property Law](#)
- [GST in property transactions](#)
- [Sale of real estate — Acting for vendors](#)
- [Sale of real estate — acting for a purchaser](#)

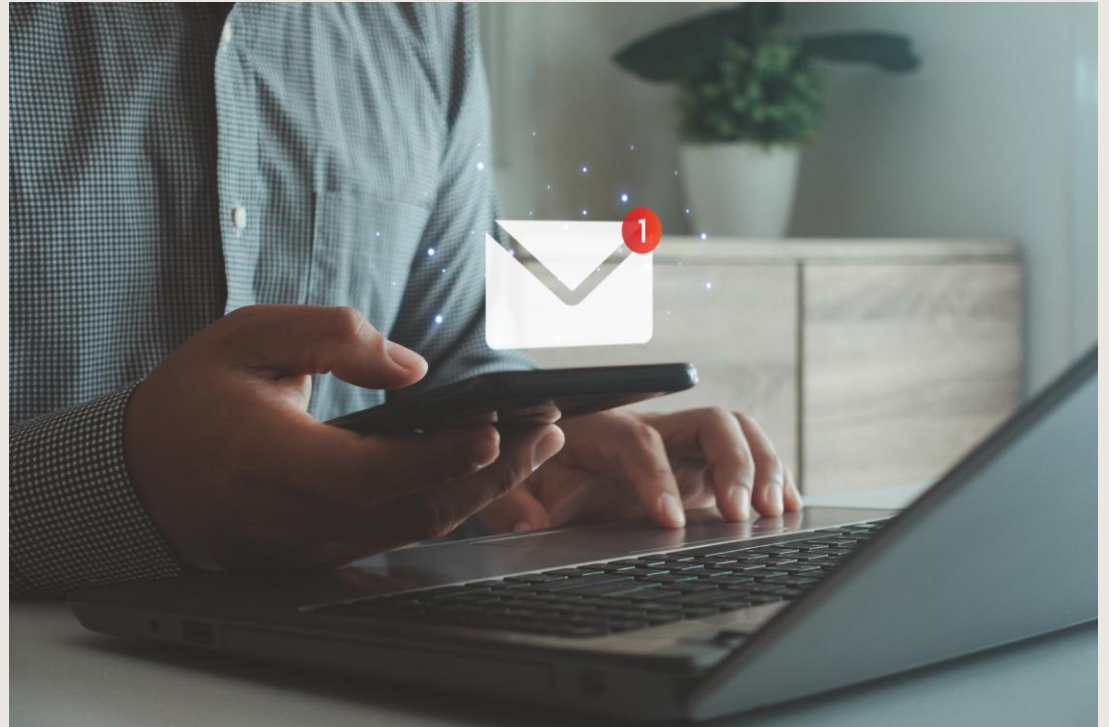
LPLC landing pages:

- [Family Law](#)
- [Securities \(mortgages, and guarantees\)](#)
- [Property](#)

- Subscribe to the latest risk management updates, events, news and alerts by visiting:
- If you have a specific risk management question or need some help finding resources, you can contact us by phone on **03 9672 3800** during business hours, or via email at:

lplc.com.au/subscribe

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Questions?

A decorative graphic on the right side of the slide, consisting of numerous thin, light blue lines radiating outwards from a dark blue circular area, creating a sunburst or fan-like effect.