

KEEP AN EYE ON THE TIME IN PI MATTERS

A multi-pronged approach is required to avoid missed time limits in personal injury matters.

Practising in personal injury law is high pressure with practitioners typically managing heavy caseloads and a multitude of critical dates. The various statutory time limits, particularly in the area of workplace injury compensation, are complex and often difficult to overcome if not complied with. Missing them can have costly consequences for clients and result in professional negligence claims. Different measures are needed to avoid these types of claims.

Why are critical dates being missed and what can practitioners do to ensure they are on time?

The most common reasons for missed time limits include inadequate processes and systems for tracking critical dates. In some cases, the practitioner simply forgot to diarise the date. In other cases, the date was diarised but subsequently missed because the file operator was either too busy, was on leave or had left the firm or team. In some instances, practitioners had recorded dates in their own electronic calendar, but failed to enter the date in their supervisor's calendar. In other cases, they had used a centralised office calendar, but no one was monitoring the calendar to track compliance. In almost all cases, there was no active review or supervision of the time limits by a second set of eyes.

Many claims have also stemmed from a failure by inexperienced practitioners to manage legal issues or conduct sufficient investigations. There was then inadequate supervision to pick up or avoid these errors. Some common areas tripping up practitioners have included:

- failure to properly identify the correct defendants
- prosecuting claims that cross over different jurisdictions or are unfamiliar to the practitioner
- agreeing to take on clients at the last minute despite needing further clarity in relation to an injury or significant further investigations
- procrastination on files where the practitioner had difficulties in obtaining the necessary medical evidence in support of the claim and/or managing the client's expectations.

Several time limits were also missed while being distracted with settlement negotiations, other alternative dispute resolution processes, or while waiting on information from WorkCover or TAC.

While there is no foolproof way to avoid missing critical dates, here are our top six steps to minimise this risk.

1. Review your processes for tracking critical dates

Time limits should be front of mind from the outset of a matter and promptly diarised. Set up multiple automated electronic reminders well in advance of approaching deadlines.

At least two sets of eyes should be reviewing and tracking time limits. Supervisors should get electronic reminders when dates are approaching and red flags if the dates are not being met. If you use a central diary system, make sure that someone apart from the file handler is also checking the diary for compliance.

2. Have a safety net

Human error is inevitable. To manage this risk, some firms employ "critical dates" staff whose primary role is to identify and track critical dates and follow up practitioners to make sure those dates are met.

The practitioners are still responsible for managing dates, but this provides a safety net or third line of defence.

In smaller teams, administrative assistants can be an effective resource in monitoring and reminding practitioners and supervisors of upcoming deadlines.

3. Consider how supervision and mentoring can be improved

Proactive supervision and mentoring of staff is not only a professional obligation, but is fundamental for developing and refining practitioners' skills and for the prevention of claims. It also drives efficiency and greater output from less experienced practitioners and can support increased job satisfaction and retention.

It is good practice for supervising lawyers to attend the first meeting with the client especially where the practitioner with the day-to-day conduct of the file is inexperienced. Experienced practitioners are typically more attuned to identifying the nuances and problems within matters at an earlier stage and can give important strategic direction on managing a range of issues including time limits, prospects of success and whether to take the matter on.

It is also important that supervision be maintained throughout the life of a matter. Finding the time can be difficult for senior practitioners who are busy managing their own file load. Many firms reduce the file loads and billable targets of supervisors to free up time and focus.

4. Invest in professional development and resources

The importance of ongoing professional development including internal training sessions and focused mentoring in this specialist practice area cannot be overstated. Converting that learning into checklists and other visual aids and resources to help practitioners navigate the complex array of critical dates is good practice.

5. Go hard, early

Put effort in at the start of each matter to identify the issues – with an acute focus on timing – to collate the required evidence and assess the prospects of the claim. The *Civil Procedure Act 2010* (Vic) underscores the importance of doing this.

6. Manage the client engagement

Finally, it is important to put the client as the core focus of the firm's offering as this drives key decisions for the firm, the matter and the staff in what is a complex and intensely human-centred area of the law. ■

TIPS

- Have at least two lines of defence to track and manage the multitude of complex and critical dates in personal injury matters.
- Effective supervision and oversight is critical to good matter management, complying with your professional obligations and avoiding claims.
- Develop checklists and visual aids to assist staff in managing time limits.

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