

Acting in motor vehicle accident claims

This fact sheet covers the importance of obtaining proper instructions when acting for clients.

INFORMATION FOR LAWYERS

The Victorian Legal Services Commissioner regularly receives complaints about lawyers who act in motor vehicle accident matters.

Complainants often allege that lawyers have unexpectedly undertaken legal work on their behalf after they had signed an 'Instructions to Act' form or similar document. This type of form may be provided by a smash repairer, a hire car provider or a tow truck operator. The complainants had evidently not understood, or received an explanation of, the effect of the documents they had signed.

Another common allegation involves lawyers issuing or attempting to issue proceedings on a complainant's behalf, when the complainant had not instructed the lawyer to do so.

Of particular concern is that in many of these instances, the lawyer had never communicated directly with the client.

Who is your client?

Lawyers must remember that your client in a motor vehicle repair claim is the driver or owner of the vehicle. If you accept instructions without having communicated directly with your client, you may fall short of your obligations to advise your client properly on their rights, risks and obligations, especially when litigating. Lawyers must be careful not to imply that they have liaised with or received instructions from their clients when there has been no contact with the client directly.¹

¹ See [Victorian Legal Services Commissioner v Logan \(Legal Practice\) \[2017\] VCAT 189 \(21 February 2017\)](#) at [4] and [62] – [63].

It is insufficient to rely on a signed form as a standing authority to act, where informed consent has not been obtained from the client. Further, in the absence of legal advice given to the client, it is improper to rely on a signed form to commence negotiations regarding quantum or liability.

Client awareness

Clients generally do not anticipate that by signing documents given to them by a business that is not a law practice, such as a car repairer or hire care provider, they are appointing a lawyer to act for them.

The setting in which documents are provided may also mislead the client as to the documents' purpose: a repairer's workshop is a very different environment to a law practice's office.

Without an explanation of what an 'Instructions to Act', an 'Overarching Obligations Certification' or similar type of document means, or the opportunity to ask questions about them, clients cannot be expected to understand the nature of such documents, regardless of whether lawyers believe the wording of the documents are clear.

Complainants sometimes claim that the signature on a document is not their signature or that they do not recall signing the document. As explained further below, given the risks that often arise with these documents, the Commissioner strongly recommends that lawyers do not rely on authority to act forms. However, if you do intend to rely on such a form, you should at least contact the prospective client to ensure that they wish to engage your services before you commence acting.

Documents purporting to appoint agents to exercise legal rights

The Commissioner has reviewed 'Instructions to Act' forms from several law firms involved in crash repair and hire car recovery claims. Often the forms purport to appoint a crash repairer, hire care provider or the lawyer themselves as the client's agent with authority to give instructions regarding the client's legal rights, including initiating proceedings, negotiating settlements and signing deeds of release.

A client should be given an explanation or advice prior to signing such a form and assigning their rights.

Your obligations to clients

Clients must be provided with appropriate advice about the legal meaning and effect of documents to be signed by them. Failure to do so is a breach of your obligations to your clients.

As a lawyer, you are obliged to confirm your client's instructions with them directly before taking action on their behalf.

It is not enough to say that clients are always welcome to ask questions when they are unsure about matters. If a client does not understand they have engaged lawyers, they will not know they may need to raise queries, or with whom they should be raised.

You must explain to your client the benefits and risks of any proposed litigation, including the possible costs consequences. You must also explain their rights and obligations in relation to their accident and/or claim (including those that may arise under insurance).

You must also ensure appropriate costs disclosure is provided to your client and/or the third-party payer.

You should take care to avoid any conflict of interest, particularly if a client has received services from a motor vehicle repairer or rental care provided in which you or any associate or your law practice has an interest. The Commissioner is likely to be concerned where a client has not been informed of an offer of a hire car from an opposing insurer or advised of the risks of being unable to recover the hire costs if the offer is refused.

As with all legal matters, you should keep good file notes and maintain copies of letters of advice and all other communications with your clients. Should a client make a complaint about your work, these documents will assist the Commissioner to resolve the complaint quickly.

Relevant cases

There are numerous examples in case law where lawyers have failed to meet their professional obligations when handling motor vehicle claims.

In each case, the solicitor was found guilty of professional misconduct and/or unsatisfactory professional conduct for issuing proceedings on behalf of one or more clients without first seeking instructions, or providing advice about the risks of those proceedings and the clients' obligations.

These cases emphasise the importance of the following:

- Confirming your appointment and the scope of the retainer;
- Communicating effectively with your client and obtaining full and complete instructions, including the circumstances of the accident;
- Providing advice about the litigation process, including likely costs and relevant time periods;
- Advising the client of their possible liability for costs and the risk of being found liable to pay the other parties' costs;
- Advising on the consequences of embarking upon litigation, especially the clients' existing rights and obligations to their insurer; and
- Dealing with trust money in accordance with instructions from the client, rather than from a repairer, a hire car provider or a debt collector.

The following cases are examples of disciplinary matters initiated before the Tribunal where lawyers have failed to meet their professional obligations when handling motor vehicle claims:

- [Victorian Legal Services Commissioner v Logan \[2022\] VSC 97 \(28 February 2022\)](#)
- [Victorian Legal Services Commissioner v Houston \(Legal Practice\) \[2021\] VCAT 34 \(19 January 2021\)](#)
- [Victorian Legal Services Commissioner v Nikolaidou \(Legal Practice\) \[2020\] VCAT 187 \(18 February 2020\)](#)
- [Victorian Legal Services Commissioner v Chelper \(Legal Practice\) \[2018\] VCAT 2041 \(21 November 2018\) \(at \[69\]\)](#)
- [Victorian Legal Services Commissioner v Logan \(Review and Regulation\) \[2017\] VCAT 1330 \(18 August 2017\)](#)
- [Victorian Legal Services Commissioner v Logan \(Legal Practice\) \[2017\] VCAT 189 \(21 February 2017\)](#)
- [Victorian Legal Services Commissioner v Logan \(Legal Practice\) \[2016\] VCAT 544 \(8 April 2016\)](#)

[2016](#)) (Decision)

- [Victorian Legal Services Commissioner v Logan \(Legal Practice\) \[2016\] VCAT 1193 \(18 July 2016\)](#) (Penalty)
- [Victorian Legal Services Commissioner v Anderson \(Legal Practice\) \[2015\] VCAT 1157 \(31 July 2015\)](#)
- [Legal Services Commissioner v Brott \(Legal Practice\) \[2011\] VCAT 110 \(7 February 2011\)](#)
- [Victorian Lawyer's RPA Ltd v Hession \[2000\] VLPT 12 \(1 August 2000\)](#)
- [Legal Ombudsman v Battley \[1999\] VLPT 6 \(6 September 1999\)](#)

Note: Although the landscape of litigation has changed due to the requirements of the [Civil Procedure Act 2010](#), the issues raised in the cases from before 2010 remain relevant.

Recommendation

If you rely on instructions from a signed form where no legal advice has been provided to the client, you run the risk of being the subject of disciplinary proceedings. Further, the Victorian Legal Services Board has given management system directions under section 257 of the Uniform Law to a number of law practices in circumstances where there was concern regarding the law practice obtaining proper instructions in motor vehicle claims.

The Commissioner strongly recommends that 'Instructions to act' forms should be amended to remove any reference to an authority to act. A simple note of consent for the potential client's details to be passed on to the law practice could instead be added.